Supreme Court, U.S.
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No. 04-443

In the Supreme Court of the United States

STACY ALLEN DRAPER,
Petitioner

v.

CLINTON D. REYNOLDS,
Respondent.

On Petition for a Writ of Certiorari
To the United States Court of Appeals
for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether, in a *de novo* review of a summary judgment, the Eleventh Circuit improperly granted qualified immunity to a deputy sheriff, sued only individually, in a 42 U.S.C. §1983 action involving First, Fourth and Fourteenth Amendment violations, when there was a disputed issue about the existence of a tag light violation, the alleged reason for the stop of the ICC truck driver, and were further disputed issues involving the conduct of the deputy thereafter, as he abusively cursed the driver, shot him with a M-26 Air Taser stun gun and further used excessive force during the illegal arrest.

2. Whether the Eleventh Circuit, in reviewing the district court judge's refusal to recuse himself and his denial of a disqualification motion, erred, in using an abuse of discretion standard for its review and, more importantly, in affirming the judge's failure to recuse or disqualify himself.

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Stacy Allen Draper respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINION BELOW

The opinion of the court of appeals (App. 1a-30a) is reported at 369 F.3d 1270. The judgment and opinion of the district court granting summary judgment to Clinton D. Reynolds is App. (31a-59a). The opinions of the district court in which Judge Jack T. Camp refused to recuse himself are at App. 60a-83a.

JURISDICTION

The judgment of the court of appeals was entered on May 17, 2004. A petition for rehearing or rehearing *en banc* was denied on July 6, 2004 (App. 84a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional and statutory provisions, as this information is extensive, are at (App. 85a-90a).

STATEMENT OF THE CASE

Overview of the Case

This case is primarily based upon 42 U.S.C. § 1983 procedurally authorized First, Fourth and Fourteenth Amendment constitutional tort claims. The district court granted the respondent summary judgment on the federal issues; however, the case also includes ancillary state law issues, which the district court left intact by remanding the state law claims to the state court. The state law claims are factually relevant in

identifying the nature of the constitutional violations.[1]

Stacy Allen Draper, an African American truck driver pulling for Texas Star Express, an ICC regulated trucking company, filed his Complaint in the State Court of Coweta County, Georgia.

The sole defendant there, sued only individually, was Clinton D. Reynolds, an ACE team member of the Crime Suppression Unit of the Coweta County Sheriff. Clinton D. Reynolds, a white person, removed the case a street block away from the state court (a jurisdiction with a 16.3% African American population), to the U. S. District Court for the Northern District of Georgia, Newnan Division, (a jurisdiction with a 20.09% African American population). The Newnan Division is assigned exclusively to Judge Jack T. Camp, a lifelong resident of Coweta County, where he has large land holdings.

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[1] There is a video CD and VHS in the court of appeals record depicting the conduct of the officer on the roadside after he stopped Stacy Allen Draper. Two copies of this VCD are provided the Clerk, with a cover letter identifying the VCD. It is otherwise viewable on the Internet at the following URL.

http://www.mfoffice.com/video

The video CD contains the most complete version of the video; however, the picture quality is better on the VHS. Neither the VCD nor the VHS captures the audio of the officer's initial taunting conduct to Stacy Allen Draper, as only the sound from the microphone in the car is initially audible. The affidavit of Stacy Allen Draper supplies the audio content of this initial conduct. A careful observation and listening to the video at the point that other officers arrive indicates that the officer can remotely change the location of the audio pickup from inside the car to his location.

The marketability of the Camp land is dependent upon rezoning by Coweta County Board of Commissioners.

While Clinton D. Reynolds is only sued individually, he is defended with the benefits of an insurance policy paid by Coweta County, containing a $25,000 deductible clause, which deductible amount the Coweta County Board of Commissioners guarantees to pay for Clinton D. Reynolds.

The incident giving rise to this litigation began on Interstate 85 (or "I-85") in Coweta County, Georgia on July 19, 2001. The causes of action arise from the conduct of Clinton D. Reynolds, during an illegal vehicle stop, arrest, search and seizure, including an abridgement of free speech, as a prelude to the use of excessive force against Stacy Allen Draper, an experienced truck driver, with ten years in the military, which included service as a military police.

Clinton D. Reynolds used excessive force by shooting Stacy Allen Draper with a M26 Air Taser, a highly powerful version of a weapon identified by Georgia law, O.C.G.A. § 16-11-106 (a), as a stun gun. Stacy Allen Draper was debilitated and collapsed onto the pavement by the electrical shock emitted by the two metal dart shaped probes shot into his chest from the weapon. [2] While one of the two metal dart prongs remained lodged in Stacy Allen Draper's chest and tethered with an electrical wire to the M26 Air Taser, Clinton D. Reynolds emphatically commanded an ACE team member just arriving on the scene to,

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[2] The Georgia Supreme Court holds that a stun gun, such as used here, can constitute an offensive weapon authorizing an armed robbery conviction under O.C.G.A. § 16-8-41 (a). *Harwell v. State*, 270 Ga. 765, 767, (512 S.E.2d 892) (1999).

"Handcuff this Son of a Bitch!" This statement, indicating the frame of mind of the deputy, is not included in the court of appeals' transcript that it created from the VCD; however, it is clearly documented on the VCD and in an affidavit (App. p. 115a). As commanded, the ACE team member with a knee-drop applied the force of his body weight onto the back of Stacy Allen Draper, and thereby lodging the metal probe deeper into his chest, as he laid face down, helplessly debilitated to the side of I-85.

Deputy Sheriff Clinton D. Reynolds falsely arrested Stacy Allen Draper on two charges. The first false charge was that Stacy Allen Draper did not have the light above his tag burning on the Texas Star Express trailer, O.C.G.A. § "40-6-23"[sic], which is actually § "40-8-23(d)". Stacy Allen Draper strongly maintains that the tag light was burning and that the other conduct of the deputy supports that the tag light accusation was a ruse for a pretextual stop to search.

The second charge in the Incident Report is "Obstruction of Police [O.C.G.A. §] 16-10-24". The Solicitor for the State Court of Coweta County, after viewing the videotape numerous times, dismissed this charge, as he, with a state court finding of fact, determined it clearly did not occur.

This case also involves the failure of U.S. District Court Judge Jack T. Camp to recuse himself and later, upon motion, his failure to refer a disqualification motion to another judge and/or to disqualify himself on the urged grounds, which were statutorily, administratively and constitutionally based upon 28 U.S.C. §455, 28 U.S.C. §144, the Code of Conduct for United States Judges and the Fifth and Fourteenth

Amendment to the United States Constitution.

Judge Camp and his immediate family own a third interest, with their other kin owning the remainder, in a humongous tract of land, which is 1200 acres near the City of Moreland, in Coweta County, Georgia. This land, because of its zoning status, is presently worth only twenty percent (20%) of its potential market value of tens of millions of dollars. The potential of this asset is hostage to the politically motivated zoning whims of the Coweta County Board of Commissioners (Dep. Camp Lawyer pp 13, 20).

Background of the Case

This case involves ongoing constitutional violations that exist in Coweta County, Georgia with the conduct of the ACE Unit of the Coweta County Sheriff. The Ace unit basically is a "criminal interdiction unit," which stops vehicles to look for criminal activity (Deps. Deputy Story p. 6:15, Deputy Reynolds p. 18:25). The elected white Solicitor of the State Court of Coweta County, Robert Stokely, who reviews all of the traffic charges made by the ACE unit, explains the problem best in his deposition, beginning at p. 143:20, as he described the modus operandi of the ACE unit, of which Clinton D. Reynolds is a member.

> Q [By counsel for Clinton D. Reynolds] . . . Do you think that the Coweta County sheriff's office is racially profiling out on I-85 in this area Draper was pulled over, and if so, what leads you to believe that?
>
> A [By Robert Stokely, Solicitor of State Court of Coweta County] I've seen too many instances prior to this heat getting turned up to where an awful lot and I'll say this honestly, if

> you want to get pulled over coming northbound at about exit -- mile marker 43, be black or be Hispanic and sometimes just a poor white person in a certain type vehicle with a tag from Alabama, Mississippi, Louisiana or Texas and you can just about guarantee -- and a certain age, you can just about guarantee yourself getting pulled over.

Stacy Allen Draper repeatedly told Clinton D. Reynolds that he was innocent of any wrongdoing; in spite of these protests, Clinton D. Reynolds never informed this truck driver of the reason for the stop.

Solicitor Stokely explained both his view, as the prosecutor of the criminal case, and the view of State Court Judge John Herbert Cranford about the nature of stops for tag light violations as follows (Dep. p. 50).

> [By Solicitor Robert Stokely:] I said I don't care about the tag light case. I've told -- I've told them and I've told them tag lights, just leave them alone. You're going to get -- you're just harassing folks when you do that. * * *
>
> I felt that way about it for two years and if you have a conversation with John Herbert Cranford [Judge of the State Court of Coweta County], he's going to have even stronger words for you about a tag light. And he's made it clear to me how he feels about tag lights.

The record is blessed with three video versions of the conduct of Clinton D. Reynolds. The version of the video first turned over to the State Court of Coweta County did not show the swarm of deputies that broke the seal on the trailer and began a search of the tractor and trailer. Eventually, counsel for Stacy

Allen Draper obtained a more complete version of the video. Absent from each of the versions is the initial verbal assault upon Stacy Allen Draper, as Clinton D. Reynolds initially approached the passenger side of the tractor trailer. The conduct that occurred at the rear of the trailer resulted from Clinton D. Reynolds' initial racially motivated taunting and foul language violations of the Coweta Sheriff's Manual. It appears that Clinton D. Reynolds initially remotely set the video microphone to activate from the microphone, which was inside his car, as the equipment allows, instead of the microphone on the deputy.

The affidavit of Stacy Allen Draper explains his conduct, as his Texas Star Express tractor trailer approached Coweta County, as follows.

> I heard from other truckers on my CB radio that there were law enforcement officers in the median of I-85. * * *
>
> Near the 45 mile marker in Georgia, as I had been informed, I saw a bunch of vehicles appearing to be that of law enforcement officers; they were stopped in the median and facing perpendicular to I-85. Carefully obeying the law, I passed three or four of these vehicles, but actually, more than observing the patrol cars, I was observing the heavy road traffic that had bunched up apparently because everyone appeared to be aware of the presence of patrol cars (App. 106a).

As Stacy Allen Draper further explains in his affidavit, before Clinton D. Reynolds could have observed his tag light, he turned on his blue light and began pursuit of Stacy Allen Draper.

As I was passing one of the patrol cars with its headlights on, the officer in the car began flashing the car's blue light as it headed onto I-85. At this time, there was another vehicle following close behind my trailer, which driver apparently felt a bit restrained from speeding past me in the presence of the numerous law enforcement vehicles in the median. The distance between my trailer and the vehicle directly behind me was so close that while the patrol car with its blue light flashing was initially entering I-85, the patrol car could not get immediately behind my tractor trailer.

As the patrol car continued flashing its blue light, I realized that the patrol car was in all likelihood flashing its blue light for me to stop. Accepting that the patrol car was attempting to stop me, I slowed down and pulled off I-85 onto the right shoulder of the north bound lane (App. 106a-107a).

Solicitor Stokely in his deposition explains the nature of the pretextual stop for the tag light violation in his deposition, as follows at p. 117.

. . . But, you know, I know one thing, if you sit there on the side of the expressway and a tractor trailer goes by you or a car goes by you and they're running 70 miles an hour with traffic and that road's busy all the time. I mean, I've ridden that road day and night any day of the week and on holidays and it's not never not busy. I mean, it's a constant stream of traffic north and south. You're not going to be able to know a tag light's out. No way. I'll never believe that.

Ironically, Clinton D. Reynolds' lawyer, in questioning Stacy Allen Draper, asked the following series of questions during his deposition in attempting to make the incorrect assumption that Clinton D. Reynolds did not racially profile Stacy Allen Draper because he could not determine the race of Stacy Allen Draper as his truck passed the vehicle of Clinton D. Reynolds because of the short time for observation.

> Do you know how fast you were going at the time you went past--?
>
> Do you know how many feet per second 66 or 67 miles per hour is?
>
> It's your belief, and your testimony, that it is possible for someone sitting in the median of the interstate at 11:30 at night watching traffic go by at 66 or 67 miles per hour to look into the cab of truck, ten feet [actually 6 feet 6 inches] off the ground and determine the race of the person driving the truck?

Stacy Allen Draper, in his affidavit, explains the initial exchanges that he had with Clinton D. Reynolds as follows (App. 107a-110a).

> When I pulled my tractor trailer off the roadbed to the right side of I-85, I allowed my truck engine and air conditioner to continue to run, as is common when I stop my truck for a short period of time. In preparation for the law enforcement officer's initial inquiry, I turned on my cab light and began locating my driver's license and medical card. These are the two items that law enforcement officers usually request of truckers after a stop.
>
> After locating my driver's license and medical

card, I then turned off the cab light and waited for the law enforcement officer to approach the cab of my truck from the driver's side of my cab.

My tractor cab has large, clear, untinted glass windows. The cab of my truck also has a rather long dual step running board. However, without using either of the dual steps leading to the interior of the cab of my truck, a person who is six feet tall standing flat footed on the ground can easily observe both the driver's face and upper torso. The bottom of the clear, untinted side window glass on my truck was 6 feet and 6 inches from the ground.

The law enforcement officer involved in the stop of my truck was a person I now know to be a Coweta County Deputy Sheriff, Clinton D. Reynolds. He is approximately six feet tall.

I sat in the cab of my truck, expecting the law enforcement officer to approach on the driver's side, as I have observed to be the usual side of trucks and other vehicles that law enforcement officers approach after making a stop on a highway. I did not see Clinton D. Reynolds approaching on the driver's side of my cab as I expected.

I have viewed what is referred to as the "second version" and "third version" of the videotape in footnote 1 of the Memorandum of Law in Response to the Motion for Summary Judgment of Clinton D. Reynolds.

Viewing the videotape, in both versions, I can now see that Clinton D. Reynolds came along the passenger side of my tractor trailer to approach

me. On that night, I did not notice, that instead of approaching my truck on the driver's side of my cab, as I expected, that Clinton D. Reynolds was in the grassy area, some fifteen or more feet away from the truck cab's passenger side until I saw the beam of his flashlight on my truck.

The window glass on the passenger side of my truck was also clear, clean and untinted. When Clinton D. Reynolds was on the passenger side of the truck cab instead of the driver's side, and standing some distance from the truck, I assumed my tractor was undergoing some type of DOT inspection.

Observing that Clinton D. Reynolds was on the passenger side of my truck, by looking out of the passenger side window, I attempted to observe exactly what was happening on that side of my truck cab. My truck did not have a bench type of front seat, as most cars and small trucks have, but instead my truck had two separate seats separated by an open space with mechanical and other essentials located between the seats. While I was attempting to shift positions in the front of my truck and look out of the passenger side of my truck, Clinton D. Reynolds shined the strong beam of his flashlight into the cab of my truck; he shined the light directly in my face. Clinton D. Reynolds kept the beam of his intensely lit flashlight on my face to the degree that the strong, intense light from his flashlight blinded my vision.

I managed to reach the window control and lowered the passenger side window in order to

both hear what Clinton D. Reynolds was saying and also to be heard better by Clinton D. Reynolds. In a very civil manner, I asked Clinton D. Reynolds to please stop flashing the light in my eyes.

While this was occurring, I was still thinking that rather than a traffic stop, the person outside my truck cab on the passenger side was a DOT inspector, attempting to tell me that there was something wrong with my truck such as a blown tire or maybe a DOT officer was doing a periodic DOT check beginning at my running gear of my truck. I have noticed DOT officers parked with other traffic control officers on occasions.

At the time, when Clinton D. Reynolds was first shining his light in my eyes, I wasn't angry and certainly not considering even thinking about expressing anger or displeasure, because I deal with hundreds of law enforcement officers each month as I pass through numerous weigh stations and state port of entry check points on every trip. Yielding to the authority of law enforcement officers is a daily part of my working life; they have their job and I have mine and I respect their responsibilities and duties. As a military veteran of many years of service, I am certainly accustomed to taking orders and showing respect.

Upon being stopped by the blue light of the car driven by Clinton D. Reynolds, I was preparing to be, if anything, overly friendly to the law enforcement officer, so if something was wrong with my truck or trailer that I could obtain

assistance with a quick repair, receive a warning or maybe be released without a warning. It is just common sense for me to please the officer and certainly, not to anger a person who could delay the delivery of my load and cause me trouble for delivering the load late.

The Racially Motivated Taunting of Stacy Allen Draper by Clinton D. Reynolds

Clinton D. Reynolds initially began taunting Stacy Allen Draper with his four cell halogen flashlight and then accelerated his conduct with foul language, which is strictly prohibited by Chapter V, C-4(d) of the *Policy and Operations Manual of the Coweta Sheriff* (App. 91a). The manual directed all deputies to refrain from engaging in this type of conduct. Stacy Allen Draper addressed this conduct in his Affidavit.

> Clinton D. Reynolds, after I politely requested that he get the light out of my eyes, yelled back to me in a hostile tone, "Goddamn it! Don't you worry about what the hell I'm doing over here." Thinking he did not understand my request, I repeated that he was blinding me with his flashlight. At that point, Clinton D. Reynolds yelled another obscenity at me, "I told you to get your fucking ass over here two times!"
>
> At this point in time I realized that I had the type of problem that professional truck drivers for ICC respected carriers such as Texas Star Express generally do not encounter. I perceived that Clinton D. Reynolds was deliberately, intentionally and willfully using the strong beam of his flashlight in attempts to anger, irritate and provoke me.

Being upset by Clinton D. Reynolds' treatment of me, which I recognized and properly perceived was directed toward me because of my race, I used language similar to the language that Clinton D. Reynolds initially used in talking to me. I asked Clinton D. Reynolds to stop shining "the Goddamn flashlight" in my eyes. He responded, "Oh yeah?" and then told me to meet him at the back of the truck, "and we'll see."

* * *

In my experience, law enforcement officers present to the driver's side of the vehicle, and either knock on the door or window or otherwise indicate their presence, if their presence is not apparent, and then politely ask that first, well known question, "can I see your driver's license and medical card."

Generally, this initial contact is followed by the officer informing the person stopped of the reason for the stop. None of this happened when Clinton D. Reynolds stopped me. The conduct of Clinton D. Reynolds very much scared me even though I had seen the numerous patrol cars in the grassy median and believed that there were law enforcement officers near-by.

When Clinton D. Reynolds yelled, "Goddamn it!" to me, I consider that phrase to be demeaning curse words. These words were used in a manner to demean me as a person because of my race. I consider this conduct by a person who was a law enforcement officer to be just plain despicable.

I approached the rear of the trailer with my driver's license and medical card exposed in

plain view in my hand. The items viewable in my hand on the videotape are my driver's license and medical card (App. 111a-113a).

The Video Depicts the Conduct of Clinton D. Reynolds at the Rear of the Trailer

There was a lot of road noise at the time Stacy Allen Draper and Clinton D. Reynolds were at the rear of the trailer. Stacy Allen Draper spoke loudly, with animations, both to be heard over the road noise and in an attempt to explain how the conduct of Clinton D. Reynolds toward him was inappropriate. (App. 111a). Instead of informing Stacy Allen Draper of the reason for the stop, Clinton D. Reynolds attempted to accelerate his initial, racially motivated demeaning and taunting behavior toward Stacy Allen Draper.

Stacy Allen Draper in his affidavit explains the racially discrimination as follows.

> Because of my experience of 37 years of living on this earth, I knew Clinton D. Reynolds was racist. I attempted to explain this to counsel for Clinton D. Reynolds at my deposition.
>
> I further explained at my deposition that I believe that if I had been a white person, Clinton D. Reynolds would never have done such a thing to me. He would never treat a white person like he treated me. Clinton D. Reynolds hated that a black man was communicating with him on the same level he was. I stood what I though to be my constitutionally protected ground, which was my right, and I don't think Clinton D. Reynolds appreciated that at all.
>
> Frankly, I felt that all of the years that I served this country in various parts of the world

in the military accorded me the right to be treated equally. While in the military, at times I served as a military police and I know we were trained never to treat people who were even against our country in the manner that Clinton D. Reynolds was treating me (App. 113a). * * *

Clinton D. Reynolds is a racist who would not have conducted himself as he did, if I had been a white person. I felt Clinton D. Reynolds was trying to make me feel like two-thirds of a person (App. 117a). * * *

I repeatedly told Clinton D. Reynolds that I had done nothing wrong. Certainly, if he thought that I was doing something wrong, he should have informed me of my wrongdoing.

Never at any time until I arrived at the jail did I learn that Clinton D. Reynolds was maintaining that I had an inoperative tag light on the trailer. To me, it is not understandable that Clinton D. Reynolds never informed me of the reason for the stop. I was not informed of the reason until several hours after I had arrived at the jail.

When I viewed the videotape during the depositions, I heard Clinton D. Reynolds tell another law enforcement officer that he was "going" to charge me with a tag violation, meaning a tag light violation. The way that Clinton D. Reynolds used the word "going" to charge, adds to my disbelief that he really stopped me for a tag light violation.

At the time I was at the rear of the truck, I was willing to either be arrested or get whatever documents Clinton D. Reynolds asked me to

> bring to him. At no time did I get into a fighting stance, "square up" as sworn to by Clinton D. Reynolds or indicate that I was going to be violent or cause injury to Clinton D. Reynolds (App. 114a-115a).

Clinton D. Reynolds electrically shot Stacy Allen Draper with a M26 Air Taser Gun at a time that Stacy Allen Draper was attempting to follow his orders. Stacy Allen Draper explains further in his affidavit, as follows (App. 115a-116a).

> As the result of being shot with the Taser, and electrically knocked down to the pavement of the roadbed of I-85, I lost total control of the functions of my body. I dangerously fell into or near the roadbed of I-85, could have been hit by oncoming traffic, and because of the proximity of the bumpers of the vehicles, could have easily struck my head during my debilitation; luckily, I did not hit the truck or cruiser during my debilitation.
>
> The electrode from the M26 Air Taser Gun penetrated my skin, knocking me to the pavement near or on the roadbed of I-85. The shot from the Taser Gun disabled my nervous system. While lying on the ground in a shocked state of mind from being shot, I had vaguely retained composure enough to hear Clinton D. Reynolds yell, "handcuff that son of a bitch!" I clearly heard this remark on the videotape.
>
> This abusive, foul language directive to another law enforcement officer by Clinton D. Reynolds was a part of his conduct and conspiracy to unconstitutionally mistreat me by

falsely charging me with a crime and using excessive force. This order to "handcuff that son of a bitch!" to another law enforcement officer was followed by a painfully strong knee to my back forcing my chest, with the metal probe from the Taser Gun, hard into the pavement. The metal electrode, which was stuck in my skin, was aggravated by the weight of the other law enforcement officer on the wound, which still had the metal electrode inserted in my skin.

This additional excessive force by the other law enforcement officer at the direction of Clinton D. Reynolds was a part of the conspiracy of Clinton D. Reynolds to unconstitutionally mistreat me. Clinton D. Reynolds knew that the Taser Gun would inflict pain to me as he stood me in front of the cruiser and said to me, "that didn't feel good did it?" Again, this language by Clinton D. Reynolds was just another of his verbal attempts to abuse me.

After removing the electronic metal probe from my chest, with the assistance of another deputy sheriff, Clinton D. Reynolds then abusively placed me in the back of his cruiser.

I was placed in the cruiser in a position that I could only lie down on the back seat, with my hands cuffed behind me.

Stacy Allen Draper explained how Clinton D. Reynolds vindictively and maliciously failed to inventory the items searched and seized, as follows (App. 117a-118a).

After I obtained the third version of the video tape, I could observe that the seal on my trailer

was broken, as I found it when I retrieved my truck from the towing company location.

The personal items in my truck cab were unconstitutionally searched and seized. I was never presented an inventory of the items taken from the cab of my truck. When I retrieved my truck from the towing company, the remaining personal items in my cab were in total disarray. Personal items of monetary value were not present in the cab of the truck when I retrieved it.

The trailer that I drove was illegally searched and my personal belongings were taken by Clinton D. Reynolds and not inventoried. After waiting an inordinately long period of time lying in the back seat of the cruiser, I was finally taken to the county jail. Only after I had been at the jail for several hours, was I informed by the booking officer the alleged reason for the initial stop, and my incarceration.

Proceedings Below

Stacy Allen Draper filed a Complaint against Clinton D. Reynolds in the State Court of Coweta County on January 16, 2002. Clinton D. Reynolds filed a Notice of Removal in the United States District Court for the Northern District of Georgia, Newnan Division on February 12, 2002.

In the Certificate of Interested Persons filed February 27, 2002, Stacy Allen Draper's counsel indicated to Judge Camp that his financial interest in land, which would require rezoning before it could be marketed, was, with other matters, reason that Judge Camp should recuse himself (App. 120a-123a).

In an order filed on May 16, 2002, Judge Camp

refused the suggestion for his recusal made in the Certificate of Interested persons (App. 80a-83a).

In preparation for a Motion to Disqualify Judge Camp, on June 17, 2002 a deposition was noticed for counsel who had represented the Camp family in attempting to get their land rezoned by the Coweta County Board of Commissioners. Judge Camp, in attempting to defend himself, on June 19, 2002 faxed a letter to his old law firm, which now represents Coweta County. Judge Camp's counsel, delivered the letter to counsel for Stacy Allen Draper (App. 124a).

On August 14, 2002, a Motion to Disqualify Judge Camp was filed. This motion was denied without referral to another judge or an evidentiary hearing (App. 60a-79a). Judge Camp included numerous factual defenses in this order.

Judge Camp granted the Motion for Summary Judgment of Clinton D. Reynolds, plus costs of the action, in dismissing all of the federal claims of Stacy Allen Draper, and remanding the state law claims to the State Court of Coweta County (App. 31a-59a).

REASONS FOR GRANTING THE PETITION

The Decision Of the Court of Appeals Granting Clinton D. Reynolds Qualified Immunity Warrants Review Because It Conflicts with Decisions of This Court, and Circuit Courts of Appeals, and Substantially Undermines the Constitutional Protections Afforded Persons Traveling on I-85 in the Eleventh Circuit

Numerous law enforcement agencies throughout the country are making massive investments in the type of Air Taser stun gun that was used upon Stacy

Allen Draper. The Eleventh Circuit, with its opinion, should not be permitted to indoctrinate law enforcement officers into substituting shooting motorists with a Taser for a constitutional arrest.

The facts included in this petition are extensive in order to demonstrate that the factually disputed issue in this case of tag light or no tag light violation was resolved by the Eleventh Circuit under the guise of granting Clinton Reynolds qualified immunity, as were the issues of the unconstitutional arrest, search, seizure and use of excessive force. The Eleventh Circuit, with this opinion establishes a road map, which eviscerates the Seventh Amendment right to a jury trial in cases against law enforcement officers.

Clinton D. Reynolds, at his deposition, swore that the only reason that he stopped Stacy Allen Draper was for a tag light violation (Dep. 35:24). Stacy Allen Draper, who was only stopped for an alleged tag light violation, was shot with the Air Taser before he was told of the charges against him, before he was told that he was under arrest, before he was told to "stick 'em up," before he was told to "get up against the car," before he was asked to "cuff-up" and before any soft hands approach was attempted. The Eleventh Circuit exceeded its Seventh Amendment Constitutional bounds in not resolving the disputed issues most favorably to Stacy Allen Draper.

Clinton D. Reynolds, who is only sued individually, shot this ICC truck driver when the two were standing in front of a patrol car on heavily traveled I-85, when this deputy had his Taser Gun out of its holster in his hand ready to use, if the usual arrest commands were not obeyed and when this deputy was within flash

light range of another deputy, who actually handcuffed what Clinton D. Reynolds called this "Son of a Bitch," upon that command.

The record in this case supports Stacy Allen Draper far beyond the Eleventh Circuit's summary judgment review obligation to make a *de novo* finding of all material facts favorable to Stacy Allen Draper. He provided a comprehensive affidavit (App. 102a), was deposed extensively, and notably, is supported by a video of the incident. The elected State Court Solicitor provides testimony about the *modus operandi* of Clinton D. Reynolds. This testimony, the affidavit and the video identify the reasons that this deputy is ineligible for qualified immunity.

The problems in this case, as they relate to Stacy Allen Draper receiving an opinion, which comports with the decisions of this Court are two-fold. First, Stacy Allen Draper was doomed when he challenged the impartiality of Judge Camp; however, he was equally doomed once the case was removed to Judge Camp, if Judge Camp remained on the case. Second, and of equal importance, the Eleventh Circuit has yet to accept *Hope v. Pelzer*, 536 U.S. 730 (2002), which is this Court's strong statement that government officials cannot be accorded qualified immunity, as a shield to civil liability, reviewable by a jury, for their egregious conduct in knowingly violating people's constitutional rights. Government employees are not immune from the civil consequences of a jury trial for knowingly committing violations of established constitutional rights – including the illegal stopping of African American truck drivers from Texas for the later stated, feigned reason of a tag light violation.

Saucier v. Katz, 533 U.S. 194 (2001), directs that a court make a two-part inquiry. First, the Court must determine if the facts, taken in the light most favorable to Stacy Allen Draper, show that Clinton D. Reynolds' conduct violated the constitutional rights of Stacy Allen Draper. Second, if the Court concludes that a reasonable jury could find that the constitutional rights of Stacy Allen Draper were violated under the facts alleged, the Court must determine whether the rights of Stacy Allen Draper were clearly established; – that is, whether it would have been clear to a reasonable officer that Clinton Reynolds' conduct was unlawful.

A jury evaluating the facts about the stop, pretextually asserted to be for a tag light violation, could take into consideration the following factors and agree that the stop was pretextual, *i.e.*, the tag light was legal, and therefore that this deputy violated the Fourth Amendment rights of Stacy Allen Draper *ab initio* and continuously for unconstitutional reasons.

1. Clinton D. Reynolds did not observe the truck, or tag light within 50 feet, before he signaled the stop with his blue light (Dep. Solicitor, p. 117).

2. The tag light was operative when Stacy Allen Draper viewed it (App. 117a).

3. Clinton D. Reynolds was not a traffic cop, but a member of the ACE team of a criminal interdiction unit (Dep. Reynolds p. 19) garbed in paramilitary clothing attempting to search vehicles in order to find drugs and thereafter have the vehicles forfeited to the Sheriff of Coweta County.

4. If the stop was truly for a tag light violation, Clinton D. Reynolds would have presented himself on the driver side of the truck, requested the license of

Stacy Allen Draper and then proceed to write a traffic ticket.

5. Clinton D. Reynolds did not properly present himself after the stop, but instead, from 15 feet away on the passenger side, immediately began taunting Stacy Allen Draper with the strong beam of his flashlight and foul language (App. 108a, 111a).

6. Clinton D. Reynolds never informed Stacy Allen Draper the reason for the stop, despite numerous statements by Stacy Allen Draper that he was doing nothing wrong, "just driving down the road" and that Clinton D. Reynolds was picking on him (App. 114a).

7. Clinton D. Reynolds should have, at a minimum, informed Stacy Allen Draper of the charges and verbally notified him that he was under arrest, rather than giving Stacy Allen Draper contradictory and confusing requests. The First Amendment accords Stacy Allen Draper, who was allegedly stopped for what he later learned to be a tag light violation, the right to plead his case that he was doing nothing wrong to Clinton D. Reynolds without being shot.

8. Clinton D. Reynolds had a support group of numerous non-uniformed law enforcement officers who preyed upon the content of the trailer (on video CD) and the tractor immediately after the excessive force was administered. A reasonable jury could believe that the only goal of Clinton D. Reynolds was to search the trailer and that he used excessive force to create a means to justify a search.

9. When the tag light was captured on the videotape, for evidentiary purposes, the truck lights, and thereby the tag light, had been turned off (Dep. Reynolds p. 234).

10. Initially, Clinton D. Reynolds did not present to the State Court Solicitor the portion of the videotape showing the search of the trailer, but provided the Solicitor a version, which did not show the search of the truck and trailer (Dep. Solicitor pp. 58, 68, 137).

11. The testimony of the Solicitor of the State Court of Coweta County opined that he would never believe that Clinton D. Reynolds could even view the tag light from his position on I-85 (Dep. Solicitor p. 117).

12. The further testimony of the Solicitor of the State Court of Coweta County, as follows, could also be accepted by a reasonable jury.

> I'll say this honestly, if you want to get pulled over coming northbound at about exit -- mile marker 43, be black or be Hispanic and sometimes just a poor white person in a certain type vehicle with a tag from Alabama, Mississippi, Louisiana or Texas and you can just about guarantee -- and a certain age, you can just about guarantee yourself getting pulled over (Dep. Solicitor p. 144).

13. Stacy Allen Draper was stopped, taunted and not informed of the reason for the stop because of his race and the racially discriminatory unconstitutional conduct of Clinton D. Reynolds motivated the unconstitutional conduct of Clinton D. Reynolds.

The Solicitor of the State Court of Coweta County dismissed the obstruction of an officer charge after viewing the videotape. The determination by the Solicitor, who deals with juries on a regular basis, is a good gauge of what a reasonable jury could determine – that Clinton D. Reynolds was not obstructed.

The Unconstitutional Arrest, Search and Seizure

A reasonable jury could believe that the arrest, search and seizure were unconstitutional.

The Unconstitutional, Excessive Force

The excessive force involves essentially four acts, which are really only a continuation of one act, the shooting with the M-26 Air Taser, the pounding of the metal probe from the Taser into the chest of Clinton D. Reynolds' designated "Son of a Bitch," as he laid face down on the ground and the later pushing and positioning of the "Son of a Bitch", as designed by the deputy, in the back of the police car, where he laid medically unattended, as the trailer was searched.

While both Georgia statutes and case law have identified the nature of the generic stun gun, the more powerful M-26 Air Taser is best identified with a common sense analysis to show that a reasonable jury could both determine its use in these factual circumstances to be excessive force and that Clinton D. Reynolds was on notice that its use in this situation was constitutionally impermissible excessive force. The video shows the effect of the shooting.

A reasonable jury could maintain that if Clinton D. Reynolds shot Stacy Allen Draper with just a B-B air gun at a 10 foot range, which is less powerful than the M-26 Air Taser, that Clinton D. Reynolds was using excessive force. A reasonable jury could maintain that if Clinton D. Reynolds stuck a metal probe into the chest of Stacy Allen Draper that this was excessive force. A reasonable jury could maintain that if Clinton D. Reynolds had just used a 50,000 volt electrical wire to shock and disable Clinton D. Reynolds that this was excessive and sadistic force. Clinton D. Reynolds was

certainly on notice that the use of any one of these instruments would be excessive force against Stacy Allen Draper and that the combination is, as the M-26 Air Taser manufacturer warns, " . . a serious, state of the art defensive weapon and should only be used for self-defense in life threatening situations." *See, Hope v. Pelzer*, 536 U.S. 730 (2002).

In Reviewing, under an "Abuse of Discretion Standard," the District Court's Decision to Reject the Suggestion of Recusal and Denial of the Disqualification Motion, the Appeals Court So Far Departed from the Accepted and Usual Course of Judicial Proceedings, Including Opinions of this Court, and Sanctioned Such Departures, as to Call for an Exercise of this Court's Supervisory Power.

The Eleventh Circuit Erred in Upholding Judge Camp's Violation of 28 U.S.C. §455, 28 U.S.C. §144, and the Due Process and Equal Protection Rights of Stacy Allen Draper, as Judge Camp Refused to Recuse or Disqualify Himself.

Clinton D. Reynolds, to avoid a State of Georgia disposition for his conduct, removed the civil case to the district court of Judge Jack T. Camp, who has vast land holdings in Coweta County, marketable at only 20% of its value without rezoning by Coweta County Commissioners, the paymaster of the insurance coverage of Clinton D. Reynolds.

This Court unanimously established that the Federal Judicial Disqualification Statute "placed the obligation to identify the existence of [grounds for disqualification] upon the judge himself, rather than requiring recusal only in response to a party affidavit."

Liteky v. United States, 510 U.S. 540, 548 (1994).The judge's duty of recusal, in short, is intended to be "self-enforcing." *United States v. Conforte*, 624 F.2d 869, 880 (9th Cir. 1980) (Kennedy, J.).

Stacy Allen Draper, in his Certificate of Interested Persons notified Judge Camp that grounds existed for his recusal (App. 120a).

The several provisions of the Federal Disqualification Statute that Judge Jack T. Camp violates by not recusing himself in this case are 28 U.S.C. §455(a), 28 U.S.C. §455(b)(1), 28 U.S.C. §455(b)(4) and 28 U.S.C. §455(b)(5)(iii).

The most important interpretation of 28 U.S.C. §455 is this Court's decision in *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988), where the Court gave effect to the plain meaning of 28 U.S.C. §455(a).

In *Liljeberg*, this Court explained that

> A part of the problem is that members of the public too often have "suspicions and doubts" about the integrity of judges 486 U.S. at 864 Congress enacted §455(a) to eliminate such suspicions and doubts and to avoid the appearance of impropriety "whenever possible." *Id.* at 864-865.

Further, Judge Camp Violated 28 U.S.C. §144

For purposes of Section 144 of Title 28, the allegations of a certified affidavit must be accepted by the Court as true, and the Court must act in accordance with the mandate of Section 144 and recuse itself. *United States v. Sykes*, 7 F. 3d 1331 (7th Cir. 1993).

Instead of following the dictates of the statutes, Judge Camp organized a defense team and became an

advocate in presenting his defense in the form of "evidence" created with his word processor, rather than with sworn testimony (App. 124a-125a).

The Letter from Judge Jack T. Camp to the Coweta County Attorney, Copied to Others, Extrajudicially Supporting his Order Denying his Recusal, is Grounds in-and-of-itself for the Disqualification of Jack T. Camp as Judge

In re: Boston's Children First, et al., 244 F.3d 164 (1st Cir. 2001) the Court stated

> . . .[O]ther courts have agreed that under some circumstances a judge's defense of her own orders, prior to the resolution of appeal, may create the appearance of partiality. *See, e.g., Broadman v. Comm'n on Judicial Performance*, 18 Cal. 4th 1079, 1104, 959 P.2d 715 (Cal. 1998)

The letter not only contained a defense to Judge Camp serving in this case, but also stated that Judge Camp would serve in future cases involving the Coweta County Board of Commissioners.

Judge Camp was Factually Disqualified and Could Not Solve the Problem

A judge with substantial assets at the political whims of the County, which has a substantial financial and political stake in the litigation, does not give the appearance of justice. Even an article in the local newspaper, *The Newnan Times Herald,* on March 22, 2002, quotes one of the Coweta County Commissioners in giving the reason that Coweta County should not pay for developing a wastewater treatment plant at the Camp family "megasite" near

Moreland. Coweta Commissioner Vernon "Mutt" Hunter stated, that a "likely way for you to go to jail is to provide sewerage for a private developer." While Mutt Hunter is no lawyer, he certainly understands that the Camp family is asking that the government of Coweta County enhance the value of the Camp family's property.

Additionally, *The Newnan Times Herald,* on August 12, 2002, prominently published an article about the United Daughters of the Confederacy identifying that Jack T. Camp was among four people honored by the United Daughters of the Confederacy with the "Cross of Honor." Honors from organizations relating to the Confederacy are certainly legal; however, it is but yet another burden for Judge Camp to overcome in demonstrating his fairness to African American litigants, in light of his other conduct.

CONCLUSION

A reasonable jury composed of persons who do not flaunt the Confederate Cross of Honor, who do not need rezoning by Coweta County and who have no need to approve of a judge who does, could determine that there was no tag light violation, as the deputy deceptively "captured" on the video 10 minutes after turning off the truck lights (Dep. Reynolds p. 234), that there was no obstruction of the deputy, as supported by the state court finding of fact by the solicitor's dismissal of this charge and that the deputy knew it was a clearly established right of the driver not be shot with the metal dart from the Taser.

Respectfully submitted,

September 2004 Millard Farmer

APPENDIX A

[PUBLISH]
FILED U.S. Court of Appeals
Eleventh Circuit May 17, 2004
Thomas K. Kahn Clerk

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 03-14745

D.C. Docket No. 02-00010-CV-JTC-3

STACY ALLEN DRAPER,

Plaintiff-Appellant,

v.

CLINTON D. REYNOLDS, Deputy,

Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Georgia.

(May 17, 2004)

Before: EDMONDSON, Chief Judge, HULL, Circuit Judge, and EDENFIELD *, District Judge.
HULL, Circuit Judge:

* Honorable B. Avant Edenfield, United States District Judge for the Southern District of Georgia, sitting by designation.

Plaintiff Stacy Allen Draper sued Defendant Deputy Sheriff Clinton D. Reynolds, individually, under 42 U.S.C. § 1983 and state law, for civil rights violations arising out of a traffic stop and arrest. The district court granted summary judgment for Reynolds on the federal claims and remanded the state law claims to state court. We affirm.

I. Background

A. The Traffic Stop

At approximately 11:30 p.m. on July 19, 2001, Deputy Sheriff Clinton D. Reynolds ("Reynolds") stopped a tractor trailer truck (the "truck") driven by Plaintiff Stacy Allen Draper ("Draper"). While on patrol for the Sheriff's Office of Coweta County, Georgia, Reynolds observed Draper's truck traveling northbound on I-85 and stopped the truck allegedly because its tag light was not appropriately illuminated under Georgia law.

After Draper pulled his truck to the side of the interstate, Reynolds stopped his patrol car directly behind the truck. Reynolds on foot approached the passenger side of the truck cab, as was his practice in all roadside stops. When Reynolds reached the truck cab, the engine was running, the passenger window was closed, and the cab was illuminated briefly by an interior light but then became dark. Draper observed Reynolds at the passenger side and believed that Reynolds was performing an inspection of the vehicle. From the passenger side, Reynolds shined his flashlight at the truck cab twice.

For summary judgment purposes, we accept Draper's version of what happened.[1] Draper was blinded by the flashlight the second time Reynolds shined it in the cab. Draper rolled down the passenger window and politely asked Reynolds to stop shining the flashlight at him. Reynolds then "said something like god dammit, you don't worry about what I'm doing over here." Draper again politely asked Reynolds to stop shining the light at him. Reynolds replied, "I told you to get your fucking ass over here two times." Draper then told Reynolds to get his "god darn flashlight" out of his eyes.

Reynolds then instructed Draper to meet him behind the truck, a location in view of a police camera that Reynolds had activated in his patrol car.[2] Reynolds also unholstered his TASER International

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[1] We recite the facts in the light most favorable to Plaintiff Draper. See *Vinyard v. Wilson*, 311 F.3d 1340, 1343 n.1 (11th Cir. 2002). However, Reynolds hotly disputes Draper's version of the facts. Reynolds contends that he quickly "blinked" the flashlight into the cab twice in an attempt to "let [Draper] know that I was standing over there on the side for him to meet me over there, to know where I was at." According to Reynolds, Draper then rolled down the passenger window and said, "Why the fuck are you shining that god damn flashlight in my eyes[?]"

[2] The police camera was located in Reynolds's car parked behind the truck. Because of the camera's location, the encounter at the truck cab is not clearly visible and no sound is heard. The police camera, however, recorded the actions and sound from the encounter behind the truck.

ADVANCED TASER M26 ("taser gun"),[3] which he kept in his hand through the remainder of the encounter. Draper got out of the truck cab and walked to the back of the truck.

The video camera in the patrol car recorded Draper's and Reynolds's speech and actions behind the truck.[4] Upon arrival behind the truck, Draper immediately began shouting and complaining about Reynolds's shining the flashlight in his face. Reynolds calmly asked Draper for his driver's license, but Draper continued to complain about Reynolds's prior use of the flashlight. Draper also insisted that he had done nothing wrong. During the encounter, Draper was belligerent, gestured animatedly, continuously paced, appeared very excited, and spoke loudly.

Reynolds repeatedly asked Draper to stop yelling and informed Draper that he would be taken to jail if he continued to yell. Reynolds told Draper that he also needed Draper's log book and bill of lading. Draper

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[3] Reynolds's taser gun is a Conducted Energy Weapon that uses propelled wire to conduct energy to a remote target, thereby controlling and overriding the body's central nervous system. The taser gun fires two probes up to a distance of twenty-one feet from a replaceable cartridge. These probes are connected to the taser gun by high-voltage insulated wire. When the probes make contact with the target, the taser gun transmits electrical pulses along the wires and into the body of the target, through up to two inches of clothing.

[4] See Appendix 1 for a transcript of the conversation between Draper and Reynolds at the back of the truck captured by the police video camera.

began to walk toward the truck cab while asking Reynolds if he needed anything else, but then turned around and loudly accused Reynolds of harassing him. Reynolds replied that he needed Draper's license and insurance.

Draper handed his license to Reynolds and again began walking to the truck cab, but turned around when Reynolds told him for the second time to retrieve his bill of lading, proof of insurance, and log book. Draper still did not go to the truck cab but instead walked back toward Reynolds and accused him again of harassment.

For the third time, Reynolds told Draper to get the requested items, and Draper responded by exclaiming, "How 'bout you just go ahead and take me to fucking jail, then, man, you know, because I'm not going to kiss your damn ass because you're a police officer." Reynolds instructed Draper to calm down, but Draper protested loudly that he was calm. Reynolds explained that he believed Draper's actions were "threatening" and "putting [Reynolds] on the defensive."

For the fourth time, Reynolds told Draper to retrieve the requested documents. Draper did not move to the truck cab to get them and loudly complained that Reynolds was treating him like a "child" and disrespecting him. Reynolds replied that he had not disrespected Draper, and then he signaled to his back up, which had just arrived, with his flashlight. Draper continued to yell and accuse Reynolds of disrespecting him.

For the fifth time, Reynolds told Draper to retrieve the documents and then promptly discharged his taser gun at Draper's chest. Draper fell to the ground out of

the police camera's view. Reynolds told Draper to stay on the ground and threatened to discharge the taser gun again if Draper did not comply. Reynolds then yelled to his back-up officer who had just arrived: "Handcuff this son of a bitch." Draper was handcuffed, searched, and placed in the back of the police car.[5] The police also searched Draper's truck at the arrest site.

After the other officers arrived and Draper was arrested, Reynolds stated to the officers that he thought Draper was going "to fight me" and that he pulled Draper over for a tag light violation. At the end of the video, the police camera focused on the area of the tag, while Reynolds again explained that he pulled Draper over for a tag light violation. Draper properly points out that at the end of the video, all of his truck's rear lights were turned off and were not shining, and thus the video does not establish conclusively that his tag light was out.

As noted in his incident report, Reynolds charged Draper with obstruction of an officer, in violation of Ga. Code Ann. § 16-10-24, and with having an

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[5] While handcuffing Draper, one back-up officer placed a knee in Draper's back, which Draper claims forced a taser gun probe into his skin in the chest area. This back-up officer is not a defendant. Draper states that this area (approximately one quarter of an inch in size) became infected. Draper admits that he did not request medical treatment while in the Coweta County jail but still claims that Reynolds was deliberately indifferent to Draper's medical needs. Further, Draper raises this medical needs claim for the first time on appeal, and thus we consider it waived. See *Ferrill v. Parker Group, Inc.*, 168 F.3d 468, 475 (11th Cir. 1999).

improperly illuminated taillight, in violation of Ga. Code Ann. § 40-8-23.

B. Procedural History

Draper filed suit against Reynolds individually in the State Court of Coweta County, Georgia under 42 U.S.C. § 1983 and state law. Draper's complaint contends that Reynolds improperly stopped him, falsely arrested him, and used excessive force in his arrest, all in violation of his constitutional rights and state law. Reynolds removed the case to the United States District Court for the Northern District of Georgia.

Draper then filed a "Motion to Disqualify United States District Court Judge Jack T. Camp as Judge in This Case," which the district court denied. Reynolds moved for summary judgment based on qualified immunity. The district court granted Reynolds's motion for summary judgment with regard to the federal claims. The district court remanded the state law claims to state court. Draper appeals the district court's grant of summary judgment and its denial of his disqualification motion.

II. Standard of Review

We review *de novo* a district court's grant of summary judgment based on qualified immunity and apply the same legal standards as the district court. *Durruthy v. Pastor,* 351 F.3d 1080, 1084 (11th Cir. 2003). "We resolve all issues of material fact in favor of the plaintiff, and then determine the legal question of whether the defendant is entitled to qualified immunity under that version of the facts." *Id.*

We review for an abuse of discretion the district court's denial of a recusal motion. Byrne v. Nezhat,

261 F.3d 1075, 1100 (11th Cir. 2001); Jaffree v. Wallace, 837 F.2d 1461, 1465 (11th Cir. 1988).

III. Discussion

A. Qualified Immunity

To determine whether Reynolds is entitled to qualified immunity, we apply a two-part inquiry. First, applying the facts in the light most favorable to Draper, we must ascertain whether Reynolds violated Draper's constitutional rights. See *Saucier v. Katz,* 533 U.S. 194, 200, 121 S. Ct. 2151, 2155, 150 L. Ed. 2d 272 (2001); *Vinyard v. Wilson,* 311 F.3d 1340, 1346-47 (11th Cir. 2002); *Lee v. Ferraro,* 284 F.3d 1188, 1194 (11th Cir. 2002). Second, if we decide that a constitutional violation occurred, we then must determine whether the rights violated were "clearly established." *Vinyard,* 311 F.3d at 1346; *Lee,* 284 F.3d at 1194. We thus begin by analyzing whether Reynolds violated Draper's constitutional rights.

B. Probable Cause for Traffic Stop

Draper sues Reynolds for stopping his truck in violation of the Fourth Amendment. Draper contends that Reynolds's reason for stopping Draper - that the tag light on Draper's truck was not adequately illuminated - was pretextual. According to Draper, Reynolds stopped his truck because Draper was African American and Reynolds wanted to search vehicles for drugs with the hope of having vehicles forfeited to the Sheriff of Coweta County.

As the district court correctly noted, the Supreme Court and this Court previously rejected the use of such pretextual-stop analysis and concluded that ulterior motives will not invalidate police conduct

based on probable cause to believe a violation of the law occurred. *Whren v. United States*, 517 U.S. 806, 812-13, 116 S. Ct. 1769, 1774, 135 L. Ed. 2d 89 (1996); *United States v. Holloman,* 113 F.3d 192, 194 (11th Cir. 1997). Indeed, this Court in *Holloman* rejected a very similar pretextual-stop argument. 113 F.3d at 194. In *Holloman,* a St. Petersburg, Florida detective stopped Holloman's pickup truck because the truck's tag light was not properly illuminated under Florida law. *Id.* at 193. Under the St. Petersburg police department's drug interdiction operation, after a vehicle was stopped for a traffic violation, the detectives either would conduct a consensual search of the vehicle or would summon a narcotics detection canine to sniff the exterior of the vehicle. *Id.* After Holloman refused to consent to a search, a narcotics canine sniffed his vehicle and alerted to drugs, which were found in the vehicle. *Id.* Holloman was indicted with possession and intent to distribute narcotics. *Id.* at 193-94. Holloman moved to suppress the evidence of drugs, arguing that the traffic stop was "'unreasonably pretextual and unconstitutional.'" *Id.* at 194.

This Court in *Holloman* noted that the Supreme Court's decision in *Whren* "squarely rejected the pretextual stop analysis that had prevailed previously in the Eleventh Circuit." *Id.* This Court explained that, under *Whren,* "the constitutional 'reasonableness' of a traffic stop must be determined irrespective of 'intent,' whether of the particular officer involved or of the theoretical 'reasonable officer.'" *Id.* (quoting *Whren,* 517 U.S. at 811-16, 116 S. Ct. at 1773-76). We further explained that *Whren* "conclusively refutes the notion

that ulterior motives may invalidate police conduct that is justified on the basis of probable cause to believe that a violation of law has occurred." *Id.* at 194. In *Holloman,* this Court concluded that because the detectives "possessed probable cause to believe that a traffic violation had occurred," the stop complied with the Fourth Amendment regardless of their desire to intercept drugs.

Thus, the only question for purposes of examining the constitutionality of Reynolds' stop is: Did Reynolds have probable cause to believe that a traffic violation had occurred? Under Georgia law, a tag must be illuminated with a white light so that it is legible from fifty feet to the rear. Ga. Stat. Ann. § 40-8-23.[6] At his deposition, Reynolds testified that he stopped Draper because he observed that Draper's tag light was out. At his deposition, Draper testified that he picked up his truck at the wrecker yard between eleven a.m. and noon the next day and that his tag light was working. That the tag light was working to an unknown extent during daylight does not directly contradict Reynolds's position that the registration

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[6] Section 40-8-23 states in relevant part:

> Either a tail light or a separate light shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of 50 feet to the rear. Any taillight or taillights, together with any separate light for illuminating the rear registration plate, shall be so wired as to be lighted whenever the headlights or auxiliary driving lights are lighted.

Ga. Code. Ann. § 40-8-23(d).

plate was not clearly legible from fifty feet away on the night of the stop and is insufficient to create a genuine issue of material fact in this record. We thus conclude that Reynolds had probable cause to stop Draper's truck.[7]

C. Probable Cause to Arrest Draper

Even if the stop was constitutional, Draper contends that Reynolds violated his Fourth Amendment rights by arresting him. Probable cause to arrest exists "'when the facts and circumstances within the officer's knowledge, of which he or she has reasonably trustworthy information, would cause a prudent person to believe, under the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense.'" *Durruthy*, 351 F.3d at 1088 (quoting *McCormick v. City of Fort Lauderdale*, 333 F.3d 1234, 1243 (11th Cir. 2003)). As discussed earlier, Reynolds had probable cause to stop Draper for a tag light violation, and that probable cause was also sufficient to permit Reynolds to arrest Draper for

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[7] Given our conclusion that Reynolds had actual probable cause and no constitutional violation occurred, we need not discuss the arguable probable cause doctrine and whether a law enforcement officer reasonably could have believed that probable cause existed for purposes of determining the second prong of the qualified immunity test. *See Holmes v. Kucynda,* 321 F.3d 1069, 1079 (11th Cir. 2003); *Montoute v. Carr,* 114 F.3d 181, 184 (11th Cir. 1997). "Even law enforcement officials who 'reasonably but mistakenly conclude that probable cause is present' are entitled to immunity." *Hunter v. Bryant*, 502 U.S. 224, 227, 112 S. Ct. 534, 536, 116 L. Ed. 2d 589 (1991) (citation omitted); *Holmes,* 321 F.3d at 1079 (quoting *Hunter*); *Montoute,* 114 F.3d at 184 (same).

that violation. Thus, we now focus on the obstruction-of-justice charge.[8]

Under Georgia law, it is unlawful to knowingly and willfully obstruct or hinder any law enforcement officer in the lawful discharge of his official duties. Ga. Code Ann. § 16-10-24(a).[9] The undisputed facts in this case show that at least five times Reynolds instructed Draper to retrieve certain relevant documents. Each time Reynolds requested these items, Draper failed to comply with the request. Instead, Draper accused Reynolds of harassing him and even yelled at Reynolds, "How 'bout you just go ahead and take me to fucking jail . . . ." Draper acted in a confrontational and agitated manner, paced back and forth, and repeatedly yelled at Reynolds while they were at the back of the truck. By repeatedly refusing to comply with Reynolds's reasonable instructions, and by acting belligerently and confrontationally, Draper hindered Reynolds in completing the traffic stop.[10] Thus, Reynolds had ample probable cause to

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[8] The parties do not dispute that a custodial arrest may be made for both a misdemeanor offense and traffic violations. *See Atwater v. City of Lago Vista*, 532 U.S. 318, 355, 121 S. Ct. 1536, 1557, 149 L. Ed. 2d 549 (2001).

[9] Section 16-10-24(a) states in relevant part: "[A] person who knowingly and willfully obstructs or hinders any law enforcement officer in the lawful discharge of his official duties is guilty of a misdemeanor." Ga. Code Ann. § 16-10-24(a).

[10] For examples of the application of § 16-10-24(a), *see Evans v. State*, 250 Ga. App. 70, 71, 550 S.E.2d 118 (2001) ("This court has previously held that certain verbal

arrest Draper for violating Ga. Code Ann. § 16-10-24.[11]

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exchanges between a defendant and officers can authorize a conviction for misdemeanor obstruction."); *Pinchon v. State,* 237 Ga. App. 675, 676, 516 S.E.2d 537 (1999) ("Argument, flight, stubborn obstinance, and lying are all examples of conduct that may satisfy the obstruction element."); *Johnson v. State,* 234 Ga. App. 218, 507 S.E.2d 13 (1998) (affirming obstruction conviction where defendant refused to obey police officer's command to exit vehicle); *Carter v. State,* 222 Ga. App. 397, 397-98, 474 S.E.2d 228 (1996) (concluding that whether defendant's making "loud, unruly statements and using profane language" when police questioned her in her home constituted misdemeanor obstruction was a question for the trier of fact); *Duke v. State,* 205 Ga. App. 689, 689-90, 423 S.E.2d 427 (1992) (concluding that misdemeanor obstruction does not require "evidence of forcible resistence or opposition"); *Hall v. State,* 201 Ga. App. 328, 411 S.E.2d 274 (1991) (refusing to produce drivers' license and beginning to walk towards car were sufficient for obstruction conviction); *Bailey v. State,* 190 Ga. App. 683, 683-84, 379 S.E.2d 816 (1989) (stating that defendant's refusal to identify himself was not merely discourteous but was sufficient for obstruction conviction).

[11] Draper also argues that Reynolds violated his First Amendment right to freedom of speech because Reynolds arrested him for proclaiming his innocence. Draper's claim is without merit because Reynolds had probable cause to arrest Draper regardless of Reynolds's motivation. *See Dahl v. Holley,* 312 F.3d 1228, 1236 (11th Cir. 2002) ("Whatever the officers' motivation, however, the existence of probable cause to arrest [the plaintiff] defeats her First Amendment claim."). Further, Draper's claim in the district court that the inventory search of his truck was unconstitutional is not

D. Excessive Force

Draper also asserts that Reynolds used excessive force in effectuating the arrest by discharging a taser gun at Draper's chest. Draper argues that Reynolds did not need to use any force in arresting him because Draper gladly would have complied with Reynolds's arrest requests if Reynolds had just verbally told him he was under arrest.[12]

"The Fourth Amendment's freedom from unreasonable searches and seizures encompasses the plain right to be free from the use of excessive force in the course of an arrest." *Lee*, 284 F.3d at 1197 (citing *Graham v. Connor,* 490 U.S. 386, 394-95, 109 S. Ct. 1865, 1871, 104 L. Ed. 2d 443 (1989)). A court looks to the "totality of circumstances" to determine whether the manner of arrest was reasonable. *See Tennessee v. Garner,* 471 U.S. 1, 8-9, 105 S. Ct. 1694, 1700, 85 L. Ed. 2d 1 (1985). "In determining if force was reasonable, courts must examine (1) the need for the

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raised as an issue on appeal, and thus we do not address it.

[12] Draper also asserts in passing that excessive force was used in handcuffing him and in placing him in the police car. However, his brief on appeal fails to argue the merits of these claims, and we view them as waived. *See Chavis v. Clayton County Sch. Dist.,* 300 F.3d 1288, 1291 n.4 (11th Cir. 2002) (citing *Greenbriar, Ltd. v. City of Alabaster,* 881 F.2d 1570, 1573 n.6 (11th Cir. 1987) (stating that "issues not argued on appeal are deemed waived, and passing reference in an appellate brief is insufficient to raise an issue")). To the extent that these claims are not waived, they lack merit in any event.

application of force,[13] (2) the relationship between the need and amount of force used, and (3) the extent of the injury inflicted." *Lee,* 284 F.3d at 1198 (citing *Leslie v. Ingram,* 786 F.2d 1533, 1536 (11th Cir. 1986)); *see also Vinyard,* 311 F.3d at 1347. It is well settled that the right to make an arrest "necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it." *Graham,* 490 U.S. at 396, 109 S. Ct. at 1871-72; *Vinyard,* 311 F.3d at 1347; *Lee,* 284 F.3d at 1197. Moreover, "the calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments - in circumstances that are tense, uncertain, and rapidly evolving - about the amount of force that is necessary in a particular situation." *Graham,* 490 U.S. at 396-97, 109 S. Ct. at 1872.

In the circumstances of this case, Reynolds's use of the taser gun to effectuate the arrest of Draper was reasonably proportionate to the difficult, tense and uncertain situation that Reynolds faced in this traffic stop, and did not constitute excessive force. From the time Draper met Reynolds at the back of the truck, Draper was hostile, belligerent, and uncooperative. No less than five times, Reynolds asked Draper to retrieve

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[13] As this Court recently explained in *Lee v. Ferraro,* the need for the application of force is measured by this test: "the force used by a police officer in carrying out an arrest must be reasonably proportionate to the need for that force, which is measured by the severity of the crime, the danger to the officer, and the risk of flight." 284 F.3d at 1198 (interpreting *Graham*).

documents from the truck cab, and each time Draper refused to comply. Rather, Draper accused Reynolds of harassing him and blinding him with the flashlight. Draper used profanity, moved around and paced in agitation, and repeatedly yelled at Reynolds. Because Draper repeatedly refused to comply with Reynolds's verbal comments, starting with a verbal arrest command was not required in these particular factual circumstances. More importantly, a verbal arrest command accompanied by attempted physical handcuffing, in these particular factual circumstances, may well have, or would likely have, escalated a tense and difficult situation into a serious physical struggle in which either Draper or Reynolds would be seriously hurt. Thus, there was a reasonable need for some use of force in this arrest.

Although being struck by a taser gun is an unpleasant experience, the amount of force Reynolds used - a single use of the taser gun causing a one-time shocking - was reasonably proportionate to the need for force and did not inflict any serious injury. Indeed, the police video shows that Draper was standing up, handcuffed, and coherent shortly after the taser gun stunned and calmed him. The single use of the taser gun may well have prevented a physical struggle and serious harm to either Draper or Reynolds. Under the "totality of the circumstances," Reynolds's use of the taser gun did not constitute excessive force, and Reynolds did not violate Draper's constitutional rights in this arrest.[14]

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[14] Draper also argues that Reynolds violated his Fourteenth Amendment rights to equal protection and substantive due process. To state an equal protection claim, Draper must

E. Recusal Motion

Plaintiff Draper also appeals the district court's denial of his motion seeking its recusal under 28 U.S.C. § 455 and 28 U.S.C. § 144. The bases for Draper's motion are: (1) Draper's counsel's previous involvement in a case before Judge Camp, in which Judge Camp reduced the attorney's fees sought by Draper's counsel; (2) Judge Camp's ownership interest in certain property located in Coweta County, Georgia, for which Judge Camp previously filed and subsequently withdrew an application seeking zoning reclassification; (3) Judge Camp's previous membership in the Glover & Davis law firm, a member of which now serves as the Coweta County Attorney; and (4) Judge Camp's alleged general bias in favor of governmental attorneys and Coweta County, and against African American litigants. The district court properly denied Draper's motion.

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allege that "through state action, similarly situated persons have been treated disparately," *Thigpen v. Bibb County Sheriff's Dep't.*, 223 F.3d 1231, 1237 (11th Cir. 2000), and put forth evidence that Reynolds's actions were motivated by race. *See Vill. of Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 265-66, 97 S. Ct. 555, 563, 50 L. Ed. 2d 450 (1977). Draper presented no evidence that Reynolds treated white truck drivers differently from African-American truck drivers and no evidence showing that Reynolds's actions were motivated by race.

1. Section 455

Draper argues that Judge Camp's presiding over his case violates 28 U.S.C. §§ 455(a), (b)(1), (b)(4), and (b)(5). Section 455 provides, in relevant part:

> (a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
>
> (b) He shall also disqualify himself in the following circumstances:
>
> (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
>
> . . . .
>
> (4) He knows that he, individually or as a fiduciary, . . . has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;
>
> (5) He or his spouse . . . is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding . . . .

28 U.S.C. § 455 (emphasis added).

First, Draper asserts that Judge Camp's reduction of his attorney's fees in a previous case establishes bias against Draper's counsel, requiring recusal under §§ 455(a) and (b)(1). The United States Supreme Court has instructed that "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion." *Liteky v. United States,* 510 U.S. 540, 555, 114 S. Ct.

1147, 1157, 127 L. Ed. 2d 474 (1994). *Liteky* makes clear that a judge's decision to "benefit" one party over another in a previous judicial proceeding, without more, can never form the basis of a § 455(a) recusal motion unless the decision displays a "deep-seated favoritism or antagonism that would make fair judgment impossible." *Id.* Draper has cited no facts indicating that Judge Camp's reduction of Draper's counsel's fees evinces such favoritism or antagonism. We further note that "bias against a lawyer, even if found to exist, without more is not bias against his client." *In re Drexel Burnham Lambert Inc.,* 861 F.2d 1307, 1314 (2d Cir. 1988). Thus, Judge Camp's previous ruling clearly does not require recusal under § 455(a) or (b)(1).

Second, Draper argues that Judge Camp's ownership interest in real property located in Coweta County requires his disqualification under §§ 455(a), (b)(4), and (b)(5). Draper asserts that Judge Camp seeks to curry favor with Coweta County and the Coweta County Commissioners because (1) he filed a zoning application in the past and (2) at some point he may file another zoning application that, if granted, would increase the value of his real property.

We conclude that Judge Camp's ownership interest in property in Coweta County does not require recusal unless Coweta County and the Coweta County Commissioners are parties to the case and unless his zoning application is currently pending before Coweta County and the Coweta County Commissioners. Because Coweta County and the Coweta County Commissioners are not parties to this case, Judge

Camp was not required to recuse because of his ownership interest in property in Coweta County.

We note that our conclusion is consistent with that reached by the Committee on the Codes of Conduct of the Judicial Conference of the United States. The Committee addressed a similar situation under Canon 3C of the Code of Conduct for United States Judges, which contains language almost identical to the relevant provisions of § 455.[15] The Committee advised that a judge who is seeking action from a city zoning commission should recuse from cases involving the zoning commission. *Guide to Judiciary Policies and Procedures,* Vol. II, Ch. V, Compendium § 3.6-1(e) (2003). The Committee also advised, however, that recusal was not required in cases involving the city or its other agencies unless an appeal from the zoning

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[15] Canon 3C(1) provides, in relevant part:(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances in which:

(a) the judge has a personal bias or prejudice concerning a party . . .;

. . . .

(c) the judge knows that the judge . . . has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be affected substantially by the outcome of the proceeding;

(d) the judge . . .

(iii) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding . . . .

Code of Conduct for United States Judges Canon 3C(1) (2003).

commission was taken to the city council; in that case, the judge would be required to recuse from cases in which the city was a party. *Id.* The Committee further advised that a judge who has a dispute with a city agency should recuse for a reasonable time after the dispute is fully resolved. *Id.*

This Court is not bound by the opinions of the Committee on Judicial Codes of Conduct. In the past, however, courts have considered those opinions to some extent.[16] In this case, the line drawn by the Committee appropriately balances the need for recusal where a judge's impartiality might reasonably be questioned with the need to discourage litigants from presenting "speculative and ethereal arguments for recusal and thus arrogating to themselves a veto power over the assignment of judges." *Thomas v. Trs. for Columbia Univ.*, 30 F. Supp. 2d 430, 431 (S.D.N.Y. 1998); *see also Gas Utils. Co. v. Southern Natural Gas Co.*, 996 F.2d 282, 283 (11th Cir. 1993) (concluding that a "'remote, contingent, and speculative interest is not a financial interest within the meaning of the recusal statute . . . nor does it create a situation in which a judge's impartiality might

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[16] *See Union Carbide Corp. v. U.S. Cutting Service, Inc.*, 782 F.2d 710, 715 (7th Cir. 1986) ("In matters of judicial ethics we are bound to give some weight to the view of the committee of judges that the Judicial Conference of the United States has established to advise federal judges on ethical questions."); *see also Weingart v. Allen & O'Hara, Inc.*, 654 F.2d 1096, 1107 (5th Cir. 1981) (citing committee advisory opinions regarding recusal in addressing § 455 recusal issue).

reasonably be questioned'") (quoting *In re Placid Oil Co.*, 802 F.2d 783, 786 (5th Cir. 1986)).

Although Coweta County and the Coweta County Commissioners are not parties to this case, Draper also alleges that Coweta County has a financial interest in the outcome of the litigation because it purchased an insurance policy that provides law enforcement liability coverage, which has a $ 25,000 deductible. Under some circumstances, a judge's interest in a non-party with a financial interest in a case may require the judge's recusal from that case. *See Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 867-68, 108 S. Ct. 2194, 2206, 100 L. Ed. 2d 855 (1988) (concluding that judge who was a trustee of a university was required to recuse from case in which the university had an interest, although the university was not a party). However, there is no showing by Draper that Coweta County would pay the deductible, as Officer Reynolds is sued in his individual capacity and works for the Coweta County Sheriff's Department and not the Coweta County Commissioners. In any event, even assuming Draper has established that Coweta County somehow has an indirect financial interest in the outcome of this case, he has made no showing that the Coweta County Commissioners have any interest. Even if both Coweta County and the Coweta County Commissioners have an indirect financial interest in this case, Judge Camp's recusal still would not be required because his zoning application was withdrawn prior to the filing date of this case, and the

filing of any future zoning application is entirely speculative.[17]

Third, there is no merit in Draper's assertion that Judge Camp's previous affiliation with the Glover & Davis law firm suggests bias. Although Asa Powell, the current Coweta County Attorney, is a member of that firm, Judge Camp has not been affiliated with Glover & Davis for over 15 years.[18] Accordingly, Judge Camp's impartiality could not reasonably be questioned on that basis.

Finally, Draper asserts in effect that Judge Camp is a racist. Draper sets forth no facts to support these allegations. Draper's unsupported, inflammatory allegations alone would not cause a reasonable person to question Judge Camp's impartiality and do not entitle him to a new judge.

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[17] In addition, Judge Camp's general interest as a resident, taxpayer, and property owner in Coweta County does not require recusal in cases where Coweta County or the Coweta County Commissioners are not parties. *See In re Houston,* 745 F.2d 925, 929-30 (5th Cir. 1984).

[18] The fact that Asa M. Powell, the current Coweta County Attorney, joined Davis & Glover in 1992 - three and a half years after Judge Camp left the law firm in 1988 - makes this argument even more frivolous. Further, assuming that a judge is no longer receiving financial payment from a former law firm, a two-year recusal period is generally reasonable. *Guide to Judiciary Policies and Procedures,* Vol. II, Ch. V, Compendium § 3.3-1(b) (2003).

2. Section 144

Draper also asserts that Judge Camp was disqualified under 28 U.S.C. § 144. Section 144 provides, in relevant part:

> Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a **personal bias or prejudice either against him or in favor of any adverse party,** such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

28 U.S.C. § 144 (emphasis added). Draper's motion to disqualify Judge Camp under § 144 fails for the same reasons it fails under § 455. Draper presents no evidence that Judge Camp harbored a "personal bias or prejudice either against him or in favor of any adverse party." 28 U.S.C. § 144. Thus, the district court did not err in denying Draper's motion to disqualify the district court judge.[19]

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[19] Draper also seems to assert that Judge Camp is disqualified because he wrote a letter to the Coweta County Attorney on June 19, 2002. In the letter, Judge Camp explained that he previously had recused himself from cases involving the Coweta County Commissioners during the pendency of his zoning application. Judge Camp's letter further explained that his zoning application was no longer pending, that he did not intend to seek a change in the zoning classification of his property in the future, and that, as a result, he did not intend to recuse from further cases involving the Commissioners, and asked that Attorney

IV. Conclusion

For all these reasons, we affirm the district court's grant of summary judgment in favor of Reynolds on Draper's federal claims, its remand of Draper's state law claims to the state court, and its denial of Draper's motion to disqualify the district court judge.

AFFIRMED.

Powell discuss this information with his client and let him know if either he or his client objected. Nothing in this letter requires Judge Camp's disqualification.

Appendix 1

Draper: [Inaudible] Man, I don't know. I can't see no more.

Reynolds: Got your driver's license?

Draper: Yeah. I got my driver's license.

Reynolds: What's wrong?

Draper: Man, you're shining and blinding me, you know . . . . [Inaudible]

Reynolds: I'm shining at you to come out.

Draper: You ain't saying nothing. You just . . . .

Reynolds: You got the window up.

Draper: Whatever. Of course I can't. All I see is somebody standing there.

Reynolds: Look, you got the wrong answers out here, sir.

Draper: No I don't . . . [Inaudible] I just got . . . [Inaudible] in my eyes . . .

Reynolds: Quit yelling at me. Quit yelling at me.

Draper: I ain't doing nothing wrong. I'm just going down the road, minding my own business.

Reynolds: You don't know why I stopped you. And if you keep yelling at me, you're going to be in jail.

Draper: Oh, for what? Now I'm going to go to jail for what?

Reynolds: Cause of the way you're acting out here . . .

Draper: Answer my question.

Reynolds: . . . You're not going to sit here and yell at me, sir. I'm going to tell you that right now.

Draper: Oh, but you'll let another guy . . . [Inaudible] with a . . . I ain't even going to go there . . . [Inaudible] all right . . . here . . .

Reynolds: Now I need your log book. I need your bill of lading

Draper: [Begins to walk toward truck cab, then turns back.] You need anything else? I don't know why you're harassing me. You're, first of all, I guess you're . . . [Inaudible]

Reynolds: Let me see your driver's license and your insurance.

Draper: . . . Picking on me or something . . . I don't

know . . . [Inaudible] Maybe, what . . . [Inaudible] I don't know what your problem is . . . [Inaudible]

Reynolds: Sir, you need to go get your bill of lading and your proof of insurance. And bring it back to me. I also need your log book.

Draper: I think this is . . . [Inaudible]

Reynolds: I also need your log book, sir.

Draper: [Inaudible] . . . I'll bring everything you need, okay?

Reynolds: Sir, you're going to. Thanks.

Draper: Oh, I know, and I will. But I don't understand what your problem is with me. You see, because I think you're harassing me.

Reynolds: I think you need to go get what I asked you to get, sir.

Draper: How bout you just go ahead and take me to fucking jail, then, man, you know, because I'm not going to kiss your damn ass because you're a police officer. I'm a law abiding . . . [Inaudible]

Reynolds: You need to calm down, sir.

Draper: I am calm. I am calm.

Reynolds: No you're not.

Draper: I am calm.

Reynolds: No you're not. You're . . . [Inaudible] yelling at me and you're threatening me.

Draper: No, I'm not threatening you . . . [Inaudible] Why you saying I'm threatening you? Did I say I was going to hurt you or something?

Reynolds: You ain't going to. I'm not worried about that.

Draper: [Inaudible]

Reynolds: Cause of the way you're acting. You're putting me on the defensive.

Draper: How am I acting? I'm . . . [Inaudible]

Reynolds: I asked you to go get what I asked you to get, sir.

Draper: [Inaudible] . . . talking to me as if I'm a little child or something . . . [Inaudible] That's what I'm talking about . . . [Inaudible] have no respect for the public out here or something . . . [Inaudible]

Reynolds: I haven't disrespected you, sir.

Draper: You did. You . . . [Inaudible] shining a light in my face . . .

Reynolds: Sir . . .

Draper: . . . get out of the truck . . .

Reynolds: Go get what I asked you to get now, sir.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

STACY ALLEN DRAPER,
Plaintiff,

v.

CLINTON D. REYNOLDS,
Defendant.

CIVIL ACTION NO. 3:02-CV-10-JTC

JUDGMENT

This action having come before the court, Honorable Jack T. Camp, United States District Judge, for consideration of defendant's motion for summary judgment, and the court having granted said motion in part, dismissing plaintiffs federal claims and remanding plaintiffs state law claims to State Court of Coweta County, it is

Ordered and Adjudged that the plaintiff take nothing; that the defendant recover its costs of this action, and the action be, and the same hereby, is **dismissed** as to plaintiffs federal claims and **remanding** state law claims to State Court of Coweta County.

Dated at Newnan, Georgia, this 19th day of August, 2003.

LUTHER D. THOMAS
CLERK OF COURT

By: S/ R Harlan
Deputy Clerk

Prepared, Filed and Entered
In the Clerk's Office
August 19, 2003
Luther D. Thomas
Clerk of Court
By: S/ R Harlan
Deputy Clerk

APPENDIX C

Filed in Clerk's Office U.S.D.C. –Newnan
Aug 19, 2003 LUTHER D. THOMAS, Clerk
By: RH, Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

STACY ALLEN DRAPER,
Plaintiff,

v.

CLINTON D. REYNOLDS,
Deputy,
Defendant.

CIVIL ACTION NO. 3:02-CV-10-JTC

ORDER

This case is before the Court on Defendant's Motion for Summary Judgment [#13-1]. In this 42 U.S.C. § 1983 action, Plaintiff alleges he was arrested in violation of the First, Fourth, and Fourteenth Amendment. He also asserts numerous state law claims. Defendant moves for summary judgment, contending he is protected by qualified immunity on the federal claims. Defendant's Motion for Summary Judgment [#13-1] is GRANTED as to the federal constitutional claims. Plaintiffs state law claims are REMANDED to state court.

I. BACKGROUND

A. Factual Background of the Stop[20]

This case arises out of a stop and arrest conducted by Deputy Sheriff Clinton D. Reynolds, Defendant. At approximately 11:30 p.m. on July 19, 2001, Defendant stopped a tractor trailer rig driven by Stacy Allen Draper, Plaintiff, on Interstate 85 ("I-85") in Coweta County, Georgia.

On July 19, 2001, Defendant Reynolds[21] was on patrol for the Coweta County Sheriffs Office when he observed the tractor trailer traveling north on I-85, allegedly with an unlit taillight in violation of O.C.G.A. §40-8-23.[22] Deputy Reynolds activated his blue lights and signaled the tractor trailer to pull over. (Pl.'s Resp. Def.'s Mot. Summ. 1, Ex. 5, Pl.'s Aff. at 5, 1. 5 [#17-1].) After Plaintiff pulled his rig to the shoulder of the interstate, Defendant stopped his patrol car with blue lights flashing behind the trailer and approached the cab on foot from the

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[20] Unless otherwise noted, the following facts are either undisputed or established by the record.

[21] Deputy Reynolds has been employed by the Coweta County Sheriffs Department since October of 1996. (Def.'s Dep. at 4, 1. 24, 5, 1. 2. [#22-1].)

[22] Plaintiff disputes that the taillight which illuminates his tag was unlit. (Pl.'s Resp. Statement Material Facts at 2 [#18-1]; Pl.'s Resp. Def.'s Mot. Summ. J., at 12-13 [#17-1].) The evidence in the record is that Plaintiff checked the taillight when he was released, and discovered it worked. (Pl.'s Resp. Def.'s Mot. Summ. J., Ex. 5, Pl.'s Aff. at 13, 1. 20 [#17-1].)

passenger side. Plaintiff Draper expected the officer to approach from the driver's side and collected his driver's license and medical card. *Id.* at 5, 11. 20-21, 6 11. 10-13.

When Defendant reached the cab, the engine of the truck was still running, the window was rolled up, and the inside was unlit. (Def.'s Dep. at 102, 11. 3-5 [#22-1]; Pl.'s Dep. at 62, 11. 16-18, 63, 1. 20-22 [#14-1] .) Defendant used his flashlight to signal Plaintiff to meet him on the shoulder of the road, (Def.'s Dep. at 100, 1. 17 [#22-1]), but Plaintiff failed to respond to the light. (Pl.'s Dep. at 66, 1. 3 [#14-1].) According to Plaintiff, he was blinded when Defendant flashed the light into the cab again. (Pl.'s Dep. at 67 11. 8-11 [#14-1].)

Plaintiff asserts he rolled down the window and asked Defendant politely to stop shining the light in his face. (Pl.'s Dep. at 67, 11. 21-25.) According to Plaintiff, Defendant then "said something like God dammit, you don't worry about what I'm doing over here or something to that affect [sic] or - - and I was like, you know, excuse me, sir, but you're blinding me, you know...[a]nd then he said dammit, I told you to get your fucking ass over here two times."[23] *Id.* at 68 11. 4-10. Deputy Reynolds' version is that Plaintiff rolled down the window and said, "why the fuck are you shining that goddamn flashlight in my eyes." (Def.'s Dep. at 100, 11. 1-3 [#22-1].) It is

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[23] The police video does not record the conversation at the cab. Plaintiff asserts that someone deleted out the remarks in order to protect Defendant. (Pl.'s Resp. Statement of Material Facts at 3-4.)

undisputed, however, that Plaintiff did not initially respond to Deputy Reynold's request.

At this point, Deputy Reynolds asked Plaintiff to meet him at the back of the truck. *Id.* at 1.7. The area in back of the truck was in the lights of the police vehicle and in view of a police video camera which Deputy Reynolds had activated in the patrol car. (Pl.'s Resp. Def.'s Mot. Summ. J., Ex. 1 [#17-1] ("video").) Deputy Reynolds also unholstered his stun gun, stating he considered Plaintiffs initial response to be combative. *Id.* at 105-06. Although Plaintiff claims he was apprehensive because he was uncertain who Deputy Reynolds was, (Pl.'s Resp. Def.'s Mot. Summ. J., Ex. 5, Pl.'s Aff. at 9, 1.17 [#17-1]), Plaintiff came to the rear of the truck with his identification and medical card. *Id.* at 10, 1. 7.

From this point, the video camera inside the police vehicle accurately records the parties' words and actions, although both dispute the interpretation of those actions. The Court will rely upon the version of the police video furnished by Plaintiff. (Plaintiff's Response to the Summary Judgement Motion as Exhibit 1.) (video.) Plaintiff acknowledges that this version of the videotape accurately and correctly reflects the events as he recalled them. (Pl.'s Dep. at 144, 11. 1-4 [#14-1].)

When Plaintiff arrived at the back of the trailer, the routine stop escalated into a confrontation. Plaintiff immediately began complaining about the flashlight having been shined into his face. (video.) Defendant asked Plaintiff whether he had his driver's license, and Plaintiff acknowledged he did. Plaintiff,

however, did not produce the license, but continued complaining about the flashlight. (video.)

Passing cars created background noise, so both parties spoke loudly. (Pl.'s Resp. Def.'s Mot. Summ. J., Ex. 5, Pl.'s Aff. at 10, 1. 10 [#17-1]; Def.'s Dep. at 112, 1. 17 [#22-1].) Deputy Reynolds considered Plaintiff unnecessarily loud and told him to stop yelling. (video.) Plaintiff Draper continued to speak loudly and asserted he had done nothing wrong. (video.)

Plaintiff then offered Defendant his license, but Deputy Reynolds did not take it. Instead, he requested that Plaintiff retrieve his log book and bill of lading. Rather than complying, Plaintiff accused Defendant of harassing him, even though Plaintiff acknowledges that officers usually request logbooks during a stop. (Pl.'s Dep. at 30, 1. 25 [#14-1].) After Deputy Reynolds again directed Plaintiff to retrieve his log book and bill of lading, Plaintiff began to walk towards the cab.[24] He stopped, however, and re-approached Defendant, loudly repeating that the Deputy was harassing him. (video.)

When again requested to obtain the documents, Plaintiff responded, "how `bout you just go ahead and take me to fucking jail, then, man, you know, because I'm not going to kiss your damn ass because you're a police officer." (video.) Deputy Reynolds then told Plaintiff to calm down, but Plaintiff

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[24] Plaintiff asserts that every time he attempted to comply with Defendant's requests, Defendant would interrupt with a new command. (Pl.'s Resp. Statement of Material Facts at 32 [#18-1].)

continued to speak in a loud voice and gesture expansively. (video.) Defendant informed Plaintiff that his actions were threatening, but Plaintiff . did not alter his demeanor. (video.)

At this point, Defendant's backup arrived on the median opposite the tractor trailer. (video.) Defendant signaled the backup with his flashlight and almost immediately Plaintiff raised his arm towards Defendant. At this point, Defendant discharged a stun gun (Taser). (video.) Defendant asserts that he believed Plaintiff was going to fight, (Def.'s Dep. at 143, 1.20 [#22-1]), which Plaintiff denies. (Pl.'s Resp. Def.'s Mot. Summ. J., Ex. 5, Pl.'s Aff. at 11, 1. 23 [#17-1].) The video shows that both were clearly agitated, but the Court will draw the inference in Plaintiff's favor: he intended no physical threat.

When struck by the Taser, Plaintiff fell to the ground. (video.) Defendant yelled, "handcuff that son of a bitch!" (Pl.'s Resp. Def.'s Mot. Summ. J., Ex. 5, Pl.'s Aff. at 12, 1.18 [#17-1]; video.) One of the backup officers placed a knee in Plaintiff's back, which Plaintiff claims forced the Taser probe into his skin. (Pl.'s Dep. at 82, 1.17 [#22-1].) Plaintiff was handcuffed, searched, and placed in the back of the police cruiser. (Pl.'s Resp. Def.'s Mot. Summ. J., Ex. 5, Pl.'s Aff. at 13, 1. 9 [#17-1].) Plaintiff was subsequently charged with a taillight violation, O.C.G.A. § 40-8-23, and obstruction of an officer, O.C.G.A. § 16-10-24.

The record indicates that Deputy Reynolds, who had been employed by the Coweta County Sheriff's Department since October of 1996 (Def.'s Dep. at 4, 1. 24, 5, 1. 2 [#22-1]), had no previous contact with

Plaintiff. The record indicates no prior complaints against Reynolds similar to the present claim or for excessive use of force.

No other force was used against Plaintiff, and Plaintiff did not request medical treatment. (Pl.'s Dep. at 102, l. 19 [#14-1].) While the police searched Plaintiff after his arrest, however, Plaintiff asked whether the probe had entered his skin, but none of the officers responded. (video.) Plaintiff alleges that the area became infected, (Pl.'s Dep. at 103, l. 1 [#14-1]); however, he again sought no medical treatment. *Id.* at 135, l. 19.

With regard to the light required by statute to illuminate the tag, the video does not clearly show whether it was lit or not at the time. Based on the video, however, it appears that Plaintiff's taillight did not "illuminate with a white light the rear registration plate and render it clearly legible from a distance of 50 feet to the rear." O.C.G.A. §40-8-23(d)[25] Defendant Reynolds used his flashlight to read the number from the license plate when he stated the number over the radio. After the incident, the video recorded Defendant's explanation to another officer that he had stopped Plaintiff for a taglight violation. (video.)

B. The Procedural History

On January 16, 2002, Plaintiff filed this case in the State Court of Coweta County, Georgia, alleging the stop, the use of force, and subsequent arrest violated the First, Fourth, and Fourteenth Amendments. (Pl.'s

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[25] The Court, in reaching this conclusion, has viewed the video several times and accepts Plaintiff's argument that the video was somewhat distorted in this regard by other lights.

Compl. ¶¶ 7-7.12 [#1-1].) Plaintiff also asserts numerous state law claims. Plaintiff sued Defendant in his individual capacity, not in his official capacity. Defendant timely removed the case to federal court and now moves for summary judgment. Defendant contends that he is (1) protected by qualified immunity on the constitutional claims and (2) either protected by official immunity on the state law claims or entitled to summary judgment on those claims.

C. The Issues

Plaintiff's 36 page complaint, written in hyperbolic overstatement, alleges Defendant did not have probable cause to stop and arrest him, that Defendant violated his freedom of speech, his Fourteenth Amendment right to substantive due process and equal protection of the law, and that Defendant used excessive force to arrest him in violation of the Fourth Amendment. When Plaintiff's claims are reduced to their essence, however, the excessive force claim is the significant issue raised in his complaint. Based upon the video and the other facts established in the record, the Court concludes that a reasonable officer in light of the facts in this situation could have believed Plaintiff was likely to resist and the forced used was necessary. *Graham v. Conner*, 490 U.S. 386, 109 S.Ct. 1865 (1989).

The debatable question with regard to the use of force is whether the officer's choice of a stun-gun or Taser was appropriate to control Plaintiff. Even if the officer was mistaken in the use of a Taser, however, that mistake would not have been clear to a reasonable officer in this situation. *Saucier v. Katz,*

533 U.S. 194, 121 S.Ct. 2151, 150 L.Ed.2d 272 (2001). Therefore, Defendant is entitled to qualified immunity.

This opinion will first address probable cause for the stop since any force during an illegal stop would be excessive. The opinion will then address excessive force, the First Amendment claim, and the Fourteenth Amendment claims, in that order. Since the Court finds no federal constitutional violation, the state law claims will be remanded to state court.

II. Analysis of Legal Issues

A. Legal Standards

1. The Standard for Summary Judgment

Rule 56(c) of the Federal Rules of Civil Procedure defines the standard for summary judgment: Courts should grant summary judgment when "there is no genuine issue as to any material fact . . . and the moving party is entitled to judgment as a matter of law." The district court may not weigh conflicting evidence nor make credibility determinations, *Hairston v. Gainesville Sun Publ'g Co.*, 9 F.3d 913, 919 (11th Cir. 1993), rh'g denied, 16 F.3d 1233 (1994) (en banc), and "should 'resolve all reasonable doubts about the facts in favor of the non-movant,' ... and draw 'all justifiable inferences ... in his favor ....'" *United States v. Four Parcels of Real Property,* 941 F.2d 1428, 1437 (11th Cir. 1991).

As a general rule, "[the] party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories,

and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). However, the moving party's responsibility varies depending upon which party bears the burden of proof at trial on the issue in question.

In this situation, the non-moving party, Plaintiff, bears the burden of proof at trial, so the moving party, Defendant, is not required to support his motion with affidavits or other similar material negating the opponent's claim. Instead, Defendant may simply point out to the district court that there is an absence of evidence to support Plaintiffs case on the issue in question. *Fitzpatrick v. City of Atlanta,* 2 F.3d 1112, 1115-16 (11th Cir. 1993). Of course, Defendant may offer evidence to affirmatively negate a material fact upon which Plaintiff has the burden and which is essential to his claim. Plaintiff, however, may not rely upon allegations or denials in the pleadings, but instead must respond with sufficient evidence to withstand a directed verdict motion at trial. Fed. R. Civ. P. 56(e); *Hammer v. Slater*, 20 F.3d 1137, 1141 (11th Cir. 1994) (citing *Fitzpatrick*, 2 F.3d at 1116-17).

2. The Standard for the Qualified Immunity Defense

"Government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818,

102 S.Ct. 2727, 2738 (1982); *Vinyard v. Wilson*, 311 F.3d 1340, 1346 (11th Cir. 2002). Qualified immunity offers complete protection for government officials sued in their individual capacities, allowing them to carry out their discretionary duties without fear of personal liability or harassing litigation. *Vinyard*, 311 F.3d at 1346. Only in exceptional cases will government officials have no shield against such claims, *Redd v. City of Enterprise*, 140 F.3d 1378, 1382 (11th Cir. 1998), because qualified immunity protects from suit all but the plainly incompetent or those who knowingly violate the law. *Vinyard*, 311 F.3d at 1346 (citing *Lee v. Ferraro*, 284 F.3d 1188, 1194 (11th Cir. 2002)); *Montoute v. Carr*, 114 F.3d 181, 184 (11th Cir. 1997) (citing *Malley v. Briggs*, 475 U.S. 335, 343, 106 S.Ct. 1092, 1096-97 (1986)).

As the Supreme Court has recognized, officers are forced to make split second judgments in circumstances that are tense, uncertain, and rapidly evolving: "Officers can have reasonable, but mistaken, beliefs as to the facts establishing the existence of probable cause or exigent circumstances, for example, and in these circumstances courts will not hold they have violated the constitution." *Saucier v. Katz*, 533 U.S. at 206, 121 S.Ct. at 2158.

Qualified immunity is an affirmative defense pled by the defendant official. *Harlow v. Fitzgerald*, 457 U.S. 800, 815, 102 S.Ct. 2727, 2736 (1982). To assess whether the officer merits qualified immunity, the threshold inquiry is whether the plaintiffs allegations, if true, establish a constitutional violation. *Hope v. Pelzer*, 536 U.S. 730, 736, 122 S.Ct. 2508, 2513 (2002); *Siegert v. Gilley*, 500 U.S.

226, 232, 111 S.Ct. 1789, 1793 (1991); *Vinyard,* 311 F.3d at 1346. If the allegations establish a constitutional violation, the next step is whether the right violated was clearly established. *Id.*

Initially, the defendant official must prove that he was acting within the scope of his discretionary authority when the allegedly wrongful acts occurred. *Vinyard,* 311 F.3d at 1346. In this case, Plaintiff does not contest that Defendant was acting within the scope of his employment. The burden then shifts to Plaintiff to show qualified immunity is inappropriate. *Id.* The plaintiff must refer the district court to cases which clearly establish the right in a particularized sense: "[t]he contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Anderson v. Creighton*, 483 U.S. 635, 640, 107 S.Ct. 3034, 3039 (1987). The unlawfulness must be apparent under pre-existing law, *id.*, S.Ct. at 3039, but the action need not have been previously held unlawful. *Hope*, 536 U.S. at 739, 122 S.Ct. at 2515. What is required is fair warning that the conduct deprived a plaintiff of a constitutional right. *Hope,* 122 S.Ct. at 2515. Therefore, officials can still be on notice that their conduct violates established law even in novel factual circumstances. *Id.*

B. Fourth Amendment Claims

Plaintiff alleges that Defendant stopped his tractor trailer on a pretextual basis.[26] Specifically, Plaintiff

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[26] Plaintiff includes the testimony of the Solicitor General of Coweta County, Robert Stokley, to support his accusation that Coweta County deputies use taglights as a pretext for stopping individuals. However, in *Whren v.*

contends that Defendant had no articulable basis to conduct the initial stop and, as a result, the ensuing use of force, the arrest, and the search were unconstitutional. Defendant, on the other hand, argues that probable cause existed for the stop and arrest because Plaintiffs unlit taglight violated Georgia law. Defendant further argues that no excessive force was used to effect Plaintiffs arrest.

Plaintiffs position is that a genuine issue of material fact exists as to whether the taillight which illuminated his tag was functioning. Since all justifiable inferences should be drawn in Plaintiffs favor, the Court will assume a genuine issue of fact exists as to whether the light was functioning.

The question, however, is whether the light rendered the tag clearly legible from a distance of 50 feet to the rear, and Plaintiff offers no further evidence on this issue.

1. The Stop, Arrest, and Search

The temporary detention of individuals during the stop of an automobile, even if only for a brief period of time and for a limited purpose, is a seizure within the Fourth Amendment. *Whren v. United States*, 517

United States, the Supreme Court rejected the pretextual stop analysis. 517 U.S. 806, 813 116 S.Ct. 1769, 1774 (1997) (holding that remedies for selective enforcement of the law based on race are found in the Equal Protection Clause, not the Fourth Amendment); *United States v. Holloman,* 113 F.3d 192, 194 (11th Cir. 1997). "Instead, the Court held that the constitutional `reasonableness' of a traffic stop must be determined irrespective of `intent,' whether of the particular officers involved or of the theoretical `reasonable officer.'" *Holloman*, 113 F.3d at 194.

U.S. 806, 809, 116 S.Ct. 1769, 1772 (1996); *Delaware v. Prouse,* 440 U.S. 648, 663, 99 S.Ct. 1391, 1401 (1979). Such a seizure is reasonable where the police have probable cause to believe that a traffic violation occurred, *Whren*, 517 U.S. at 809, 116 S.Ct. at 1772, or specific articulable facts give rise to a reasoned suspicion of criminal conduct. *United States v. Strickland*, 902 F.2d 937, 940 (11th Cir. 1990).

Defendant contends probable cause existed to believe that Plaintiff violated the taillight statute, O.C.G.A. § 40-8-23(d), so the stop and arrest were lawful. Probable cause exists where "the facts or circumstances within the officer's knowledge, of which he or she has reasonably trustworthy information, would cause a prudent person to believe, under the circumstances shown, that the suspect has committed...an offense." *Von Stein v. Brescher*, 904 F.2d 572, 578 (11th Cir. 1990); *Madiwale v. Savaiko*,

117 F.3d 1321, 1324 (11th Cir. 1997). If the record establishes that the taglight was functioning properly, no probable cause existed to either stop or arrest Plaintiff.

An officer, however, needs only arguable probable cause to be entitled to qualified immunity. *Moutoute v. Carr*, 114 F.3d 181, 184 (11th Cir. 1997); *Von Stein*, 904 F.2d at 579. Arguable probable cause exists where reasonable officers in the same circumstances and possessing the same knowledge as Defendant would believe probable cause existed. *See Lee v. Ferraro*, 284 F.3d 1188, 1195 (11th Cir. 2002). This is an objective standard; a court does not inquire into the officer's subjective intent or beliefs. *Von Stein*, 904 F.2d at 579.

Although Plaintiff alleges the taglight worked when he tested it the next day, Section 40-8-23(d) requires the taglight to be "so constructed and placed as to illuminate with a white light the rear registration plate and **render it legible from a distance of fifty feet** to the rear." § 40-8-23(d) (emphasis added). Thus, the issue is not whether the light was working, but whether the light illuminated the license plate so that it was legible from fifty feet.

The video submitted by Plaintiff records his registration plate at far less than fifty feet, and, viewing the video, as well as considering that it was night, that Plaintiff was traveling at highway speed on an interstate, and that Defendant had to make a split second judgment in rapidly changing conditions, the record establishes arguable probable cause to stop Plaintiff for violating § 40-8-23(3) of the Georgia Code.

Furthermore, arguable probable cause existed to arrest Plaintiff for obstruction of an officer, O.C.G.A. § 16-10-24. An individual violates Section 16-10-24 when he or she willingly and knowingly obstructs or hinders an officer's lawful discharge of official duties. *Gainor v. Douglas County*, 59 F.Supp.2d 1259, 1281 (N.D.Ga. 1998) (Carnes, J.); *Woodward v. State*, 465 S.E.2d 511; 512 (Ga.App. 1995); *In re J.T.*, 521 S.E.2d 862, 863 (Ga.App. 1999).[27] Georgia courts have found obstruction where a party refuses to obey an officer's orders when the officer is lawfully investigating whether that party violated the law or not. *Pearson v. State*, 480 S.E.2d 911, 913 (Ga.App. 1997) (defendant refused to vacate the premises at officer's instruction); *Reed v. State*, 422 S.E.2d 15, 17-18 (Ga.App. 1992) (defendant refused to obey officer's directions during a D.U.I. investigation); *Arsenault v. State*, 571 S.E.2d 456, 457-58 (Ga.App. 2002)(defendant refused to comply with officer's order to remain inside the vehicle). A reasonable officer would believe probable cause existed to arrest Plaintiff for violating Section 16-10-24 because he continuously argued with Defendant and refused to obey direct orders.

As such, Defendant's motion for summary judgment is GRANTED on Plaintiff's Fourth Amendment claims based on the stop, arrest, and ensuing inventory search.

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[27] An officer lawfully discharges his official duties when he conducts a stop with reasonable suspicion or an arrest with probable cause. *Gainor*, 59 F.Supp.2d at 1282, *Wynn v. State*, 511 S.E.2d 201, 202 (Ga.App. 1999); *In re J.T.*, 521 S.E.2d at 864.

2. Excessive Force

The significant issue presented by Plaintiff's claim is whether Defendant's use of the Taser was excessive under the Fourth Amendment to the Constitution. The Fourth Amendment encompasses the right to be free from excessive force during an arrest. *Vinyard*, 311 F.3d at 1347; *Lee,* 284 F.3d at 1197. The right to make an arrest or investigatory stop, however, carries with it the right to use some degree of physical coercion or threat thereof to effect it. *Vinyard*, 311 F.3d at 1347 (quoting *Graham v. Conner,* 490 U.S. 386, 396, 109 S.Ct. 1865, 1872 (1989)).

Excessive force is judged by whether the officer's conduct is objectively reasonable in light of the facts confronting the officer. *Vinyard,* 311 F.3d at 1347. The use of force is assessed on a case by case basis from the perspective of the reasonable officer at the scene, not with the 20/20 vision of hindsight. *Post v. City of Fort Lauderdale*, 7 F.3d 1552, 1559 (11th Cir. 1993)(quoting *Graham*, 490 U.S. at 396, 109 S.Ct. at 1871).

Any use of force must be reasonably proportionate to the need for that force. *Lee,* 284 F.3d at 1198. To determine whether an officer's actions were excessive, the Court considers (1) the severity of the crime at issue, (2) whether the suspect poses an immediate threat to the safety of the officers or others, and (3) whether the individual is actively resisting arrest or attempting to evade arrest by flight. *Graham,* 490 U.S. at 396, 109 S.Ct. at 1872; *Vinyard,* 311 F.3d at 1347.

Assuming the facts as related by Plaintiff, the taglight and obstruction charges are of minor severity. *Vinyard*, 311 F.3d at 1347 ("[D]isorderly conduct and

obstruction...were of minor severity."); *Lee,* 284 F.3d at 1200. Furthermore, it is arguable that Plaintiff posed no immediate threat. Plaintiff's cursing, complaining, refusal to comply, and expansive gestures could be considered threatening, *see Courson v. McMillian,* 939 F.2d 1479, 1496 (11th Cir. 1991), but Defendant knew his backup had arrived when he used the Taser on Plaintiff. Finally, the video shows Plaintiff neither physically resisted nor attempted to flee.

On the other hand, Deputy Reynolds was authorized to require Plaintiff to comply with his instructions following a lawful stop. "[T]he right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it." *Graham v. Connor,* 490 U.S. 386, 396, 109 S.Ct. 1865, 1972 (1989). Furthermore, the record contains no evidence that force was applied maliciously since Defendant had no prior knowledge of Plaintiff and no record of similar complaints. *See Moore v. Gwinnett County,* 967 F.2d 1495, 1498 (11th Cir. 1992). The answer requires a balancing of the nature of the intrusion on Plaintiffs Fourth Amendment interest against the governmental interests at stake. *Jackson v. Sauls,* 206 F.3d 1156, 1169-70 (11th Cir. 2000).

Plaintiff did not comply with instructions; however, given the above Graham factors, only limited force would be appropriate. Considering Deputy Reynold's

need to enforce compliance, what were his choices, other than simply walking away?[28]

The remaining choices would be physical restraint by hand, chemical sprays or an impact weapon. Physical force (use of hands), given Plaintiffs attitude and demeanor, would likely have escalated the confrontation. Impact weapons would likely have caused more serious physical injury and seem excessive under the circumstances. That leaves chemical sprays or the stun gun. As a stun gun was the method chosen by Defendant, some consideration of its nature and effects are appropriate. According to Plaintiff, the stun gun was a Taser M26:

> The M26 is a less-lethal Conducted Energy Weapon that uses propelled wires to conduct energy to a remote target, thereby controlling and overriding the body's central nervous system. It uses an electromuscular disruption system a 26-watt electrical signal to temporarily override the central nervous system and directly control the skeletal muscles....
>
> The M26 is an alternative, non-deadly force option. The M26 may be used to control a non-compliant subject. The m26 is deployed as an additional police tool, and is not intended to replace firearms or self-defense techniques. (Coweta County Sheriffs Office Operation Procedures, Attachment

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[28] For a good discussion of escalating situations which officers may encounter, see the *Creighton Law Review* article at 28 CRLR 733 (April, 1995).

2, pp. 5-6 to Pl.'s Mem. Opp'n Mot. Summ. J. [#17-1].)

Existing studies indicate that the weapon is disabling, but does not cause serious injury. Situations in which a Taser was used and serious injury resulted can normally be attributed to other causes such as drug use.[29] Neither party, however, has submitted sufficient evidence to establish the effect of the M26 as an undisputed fact.

Considering the lack of active resistence, the insignificance of the legal charges, as well as giving Plaintiff the benefit of the doubt, the Court holds that a reasonable jury could conclude that the use of a stun gun amounted to unconstitutional force. Defendant is nevertheless entitled to qualified immunity. As the present situation demonstrates, the analysis for the excessive use of force is fact intensive and lacks bright lines. *Post*, 7 F.3d at 1559. Qualified immunity "applies unless application of the standard would inevitably lead every reasonable officer...to conclude the force was unlawful." *Id.* To this Court's knowledge, no courts in the Eleventh Circuit have addressed when use of a stun gun constitutes excessive force in the context of the Fourth Amendment. Nevertheless, two Eleventh Circuit cases help determine whether Defendant knowingly violated

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[29] Raymond M. Fish & Leslie A. Geddes, *Effects of Stun Guns and Tasers,* 35 B *The Lancet,* 687 (2001); R. B. Kornblum & S.K. Reddy, *Effects of the Taser in Fatalities Involving Police Confrontation,* 36 *J. Forensic Sci.*, 434 (1991).

pre-existing law in the Eleventh Circuit: *Post v. City of Fort Lauderdale,* and *Nolin v. Isabell.* Both cases were decided before the incident in this case and involve situations where no significant injury resulted from the use of force.

In *Post v. City of Fort Lauderdale,* officers arrested a plaintiff for failing to remain silent during the arrest of another individual. 7 F.3d at 1556. When the officer approached to arrest the plaintiff, the plaintiff raised his hands. *Id.* Interpreting this as resisting, the officer spun the plaintiff around, placed him against a display case, and applied a choke hold. *Id.* After being handcuffed, the plaintiff made some remark, and the officer pushed him into a wall. *Id.* The Eleventh Circuit determined that a reasonable officer, interpreting the raised hands as possible violence, would have believed that the choke hold was necessary to effect the arrest. *Id.* at 1559. The court also found that, even if pushing the plaintiff against the wall was unnecessary, the amount of force used was not large enough to be clearly unlawful. *Id.*

In *Nolin v. Isbell,* an officer believed that the plaintiff and another had been fighting. 207 F.3d 1253, 1254-55 (11th Cir. 2000). The officer grabbed the plaintiff from behind and threw him against a van three or four feet away, kneed him in the back, pushed his head into the side of the van, searched his groin area in an uncomfortable manner, and handcuffed him. *Id.* at 1255. The plaintiff suffered scratches and bruising, which promptly healed. *Id.* The Eleventh Circuit classified the officer's actions as a de minimis use of force, which was insufficient for a Fourth Amendment violation. *Id.* at 1256-57.

In this case, Plaintiff's gesturing, cursing, and noncompliance could have been construed as threatening. *See Post,* 7 F.3d at 1556. Furthermore, the force used was arguably de minimis; the only physical injury Plaintiff suffered from the Taser was a scratch that he claims later became infected. Plaintiff did not request medical aid at the scene or while he was incarcerated, and he did not seek medical aid later. "While the use of force against [Plaintiff may have been unnecessary, the actual force used and the injury inflicted were both minor in nature. Given such variables, the application of the excessive force standard would not inevitably lead an official in [Defendant's] position to conclude that the force was unlawful." *Jones v. City of Dothan,* 121 F.3d 1456, 1460-61 (11th Cir. 1997); *Nolin,* 207 F.3d at 1256-57.

Finally, most literature on Tasers indicate no serious injury is likely to result, and Defendant was following the procedures of his department in employing the Taser at the time and in the manner used. *Coweta County Sheriff's Office Operation Procedures, supra* at 20. Plaintiffs counsel has not pointed the Court to any applicable case which would have put Defendant on notice that using the stun gun in this situation was a constitutional violation. Therefore, Defendant was not "so obviously wrong, in the light of pre-existing law, that only a plainly incompetent officer or one who was knowingly violating the law would have done such a thing ... ." *Lassiter v. Alabama A & M Univ.,* 28 F.3d 1146, 1149 (11th Cir. 1994), abrogated on other grounds by *Hope v. Peltzer,* 536 U.S. 730, 739 n.9, 122 S.Ct. 2508 (2002). Defendant's motion for summary judgment is

GRANTED on the excessive force claims based on qualified immunity.

C. First Amendment Violation

Plaintiff alleges that Defendant used the Taser and arrest to silence his protest of the illegal stop. (Pl.'s Resp. Mot. Summ. J. at 17.) Specifically, Plaintiff asserts a retaliatory arrest claim because he exercised his First Amendment rights. *Dahl v. Holley,* 312 F.3d 1228, 1236 (11th Cir. 2002). Defendant argues that probable cause for the arrest bars the claim.

An officer cannot arrest someone to silence First Amendment speech, and an individual has a First Amendment right to protest an illegal stop. *Norwell v. City of Cincinnati,* 414 U.S. 14, 16, 94 S.Ct. 187, 188 (1973)("Surely, one is not to be punished for nonprovocatively voicing his objection to what he obviously felt was a highly questionable detention by a police officer."); *City of Houston v. Hill,* 482 U.S. 451, 461, 107 S.Ct. 2502, 2509 (1987); *Lewis v. City of New Orleans,* 415 U.S. 130, 134, 94 S.Ct. 970, 973 (1974); *Lamar v. Banks,* 684 F.2d. 714, 718 n.13 (11th Cir. 1982).

Nevertheless, when an officer has probable cause to believe that a person is violating the law, "he is justified in arresting that person, even if the offender may be speaking at the time that he is arrested." *Redd v. City of Enterprise,* 140 F.3d 1378, 1383 (11th Cir. 1998); *Dahl,* 312 F.3d at 1235; *Wood v. Kesler,* 323 F.3d 872, 883 (11th Cir. Mar. 2003). Therefore, as Defendant had arguable probable cause to arrest Plaintiff, Defendant is also entitled to qualified immunity on the First Amendment claims. *Redd,* 140

F.3d at 1383. Defendant's motion for summary judgment is GRANTED.

D. Fourteenth Amendment Violations

Plaintiff alleges that Defendant's use of excessive force violated his Fourteenth Amendment rights. In response, Defendant contends that Plaintiff cannot maintain an action for either an equal protection or substantive due process claim.

1. Equal Protection Clause

"The central purpose of the Equal Protection Clause of the Fourteenth Amendment is the prevention of official conduct discriminating on the basis of race." *Washington v. Davis,* 426 U.S. 229, 239, 96 S.Ct. 2040, 2047 (1976). Police officers assuredly perform the type of official conduct contemplated by the Equal Protection Clause. *Whren,* 517 U.S. at 813, 116 S.Ct. at 1774. To properly state an equal protection claim, a plaintiff need only allege that through state action, similarly situated persons have been treated disparately. *Thigpen v. Bibb County Sheriff's Dep't,* 223 F.3d 1231, 1237 (11th Cir. 2000). Mere disparate impact is not enough, however. A purpose to discriminate must be present. *Washington,* 426 U.S. at 239, 96 S.Ct. at 2047; *Cross v. Ala. State Dep't of Mental Health & Mental Retardation,* 49 F.3d 1490, 1507 (11th Cir. 1995).

Considering the facts in a light most favorable to Plaintiff, Plaintiff fails to present any evidence of disparate impact due to race. First, Plaintiff identifies no direct evidence of racial motivation. Although Defendant allegedly said, "I told you to get your fucking ass over here two times," and "[h]andcuff that

son of a bitch," these statements are race neutral and do not show racial motivation. *Black v. City of Auburn,* 857 F.Supp. 1540, 1548 (M.D.Ala. 1994) ("Cursing on occasion is very different than repeated derogatory, profane, and obscene references to women.") Furthermore, Plaintiff fails to adduce any evidence that white drivers were treated differently. *Ross v. Alabama,* 15 F.Supp.2d 1173, 1188 (M.D.Ala. 1998); *Black,* 857 F.Supp. at 1548; *McCray,* 169 F.Supp.2d at 1288. Thus, summary judgment is GRANTED; Plaintiff's equal protection claim is DISMISSED.

2. Fourteenth Amendment Due Process

The protections of substantive due process "have for the most part been accorded to matters relating to marriage, family, procreation, and the right to bodily integrity." *Albright v. Oliver,* 510 U.S. 266, 271-72, 114 S.Ct. 807, 812 (1994). The Supreme Court has determined excessive force claims are not cognizable under substantive due process:

> This case requires us to decide what constitutional standard governs a free citizen's claim that law enforcement officials used excessive force in the course of making an arrest, investigatory stop, or other `seizure' of his person. We hold that such claims are properly analyzed under the Fourth Amendment's `objective reasonableness' standard, rather than under a substantive due process standard. *Graham v. Connor,* 490 U.S. 386, 388, 109S.Ct. 1865, 1867-68 (1989).

Plaintiff's allegations of excessive force are appropriately analyzed under the Fourth Amendment. As such, Plaintiff's substantive due process claim is **DISMISSED.**

IV. OFFICIAL IMMUNITY FOR STATE LAW CLAIMS

Plaintiff asserts numerous state law claims against Defendant: conversion of Plaintiffs' property; tampering with evidence and obstruction of justice; assault; intentionally inflicting emotional distress; defamation, slander, and libel; false arrest and false reporting of a crime; and interference with Plaintiffs contractual rights. Defendant argues that official immunity is appropriate on all of these claims because Plaintiff failed to present any evidence that Defendant acted with malice or the intent to injure. In the alternative, Defendant also argues that Plaintiff presents insufficient evidence to support these state law claims.

Although a number of the claims appear questionable, they all involve state law and will be better resolved by state courts. Therefore, the remaining claims will be **REMANDED** to state court for disposition.

V. CONCLUSION

Defendant's Motion for Summary Judgment [#13-1] is GRANTED in part and DENIED in part. Specifically, all of Plaintiff's federal claims are DISMISSED. The state law claims are REMANDED to the State Court of Coweta County.

SO ORDERED, this 18 day of August, 2003.

S/_____
JACK T. CAMP
UNITED STATES DISTRICT JUDGE

APPENDIX D

Filed in Clerk's Office U.S.D.C. –Newnan
Feb 25, 2003 LUTHER D. THOMAS, Clerk
By: RH, Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

STACY ALLEN DRAPER,
Plaintiff,

v. CIVIL ACTION NO. 3:02-CV-10-JTC

CLINTON D. REYNOLDS, Deputy,
Defendant.

ORDER

On August 14, 2002, the Plaintiff in this case filed a motion to disqualify this Court pursuant to the provisions of 28 U.S.C. §§ 144 and 455 [#15-1]. Two principal grounds constitute the essence of the motion: (1) the allegation that the Court has an actual bias against Plaintiffs counsel, and (2) the allegation that because the Court has an ownership interest in real estate located within Coweta County, and because a possibility exists that a future zoning application may be filed with the Commissioners of Coweta County with regard to this property, the Court would have a desire to please the Commissioners in the conduct of this lawsuit and would thus be biased against the

Plaintiff. Plaintiff also alleges that the Court is biased in favor of government attorneys and against this type of plaintiff.

For the reasons discussed below, the Motion to Disqualify [#15-1] is **DENIED.**

I. BACKGROUND

Plaintiff's counsel (hereinafter "Counsel") filed this case on behalf of Stacy Allen Draper (hereinafter "Plaintiff") against Clinton D. Reynolds (hereinafter "Defendant"), who is employed as a Deputy Sheriff in the office of the Sheriff of Coweta County. The incident which gave rise to this case was Defendant's use of a stun gun during Plaintiff's arrest on July 19, 2001. The case was filed against Defendant in his individual capacity; neither the Sheriff nor Coweta County are parties. Counsel's allegations require the Court to go far back in time in order to delineate and discuss the factual basis for this motion.

A. Bias against Counsel

Counsel's claim that the Court is biased against him personally stands out most clearly in the motion. The facts supporting this allegation are based upon an old case, *Cotton v. Todd,* C.A. No. 3:93-CV-96-JTC (N.D.Ga. Oct. 28, 1993). The *Cotton* case is the only case in which Counsel has filed papers before this judge.[30] Cotton was filed in October 1993 and terminated in August 1995, almost seven years before the present case was filed. The Cotton case involved

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[30] To the Court's recollection, Counsel has never made a personal appearance before the Court. Counsel has not pursued either of the cases before the Court to the point of a court appearance but has exclusively relied upon filing papers.

Troup County, not Coweta County, defendants. Present Counsel was counsel of record in Cotton and sought damages for the deprivation of a different plaintiffs civil rights. Counsel's allegations of bias rest exclusively on the Court's reduction of his claim for attorney's fees in Cotton.

The Cotton case settled for $5,000, thirteen months after the complaint was filed. The great majority of time prior to settlement was not spent litigating the claim of discrimination but was spent on Counsel's motion to disqualify defendants' attorneys. The motion was denied as frivolous. *Cotton v. Todd,* C.A. No. 3:93-CV-96-JTC (N.D.Ga. Aug. 22, 1994) (Order denying attorneys' disqualification). Significant time after settlement was spent litigating Counsel's request for attorney's fees in the amount of $65,581.25 and costs of $2,646.77. The Court awarded Counsel $23,675.00 in attorney's fees and $2,646.77 in costs. The award was based upon the factors which the Eleventh Circuit has ruled should be considered. *Lorange v. Stierham*, 10 F.3d 776, 781-84 (11th Cir. 1994). Over the Cotton defendants' strong objection, the Court considered Counsel's claim for time spent on related litigation and on unsuccessful motions because of the important interests asserted by the plaintiff in the case. *Cotton v. Todd,* C.A. No. 3:93-CV-96-JTC (N.D.Ga. Jul. 15, 1995)(Order granting attorney's fees). Counsel did not appeal the award as inadequate.

B. A Bias for Government Attorneys, a Bias Against this Type of Plaintiff, and a Bias in Favor of Coweta County

Counsel contends further bias based on allegations that the Court in the past represented several local

governmental entities, that a member of the Court's previous law firm is the present Coweta County Attorney, and that the County has a financial interest in the present litigation.

Neither the Board of Commissioners nor Coweta County, however, are parties to this lawsuit. Coweta County's alleged financial interest is based upon an insurance policy purchased by the County which provides law enforcement liability coverage. (Pl.'s Mot. Disqualify Ex. 3.) Counsel does not provide the policy nor any of its terms. Only the "declarations page" is in the record, which indicates a policy deductible amount of $25,000.00.

Counsel argues that Coweta County pays the premiums for the insurance policy from County funds and that the undersigned is a county taxpayer. Without factual support, Counsel argues that an award in the present case might increase taxes because the County would be obligated to pay the deductible amount and premiums paid in the future might increase. The insurance policy is the only basis in the record to support Counsel's argument that the County has a financial interest in the present case.

Counsel's allegation of bias is also based upon the Court's relationship with the Coweta County attorney. The Coweta County Attorney is Asa M. Powell, a partner in the law firm of Glover & Davis, P.A., of which the Court was a member prior to 1988. Mr. Powell became associated with the firm on April 1, 1992, 3 1/2 years after the Undersigned left the firm to accept appointment as a United States District Judge. The undersigned and Mr. Powell were never law partners nor members of the firm at the same time.

Neither Mr. Powell nor the firm have made any appearance in this litigation. Furthermore, while the Court was a member of Glover & Davis, P.A., Coweta County was not a client. The Court had no official relationship with County government or with the County Commissioners.[31]

C. Bias from a Desire to Curry Favor with the Coweta County Commissioners

The third general area of alleged bias is the claim that the Court desires to curry favor with the individual Coweta County Commissioners by ruling adversely to Plaintiff in this case. The allegation supporting this argument is a previous zoning application regarding family property in which the Court has an interest. The zoning application is a matter of public record. The nature of the Court's property interest is reflected on the real estate records in the Clerk's office of Coweta Superior Court and are readily available for review.

The property in question is the family farm of the Camp family. The original portion was purchased in 1830 and has remained in the family through hard times, wars, the boll weevil, and the Great Depression. It has produced cotton, corn, peaches, cattle, and timber. Approximately 1,200 acres remain, which are jointly owned by three branches of the Camp family.

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[31] To the Court's best recollection, his only involvement in litigation with the County was as attorney of record for the City of Newnan in a lawsuit against the County in a dispute over the constitutional authority of the two entities. *Coweta County v. City of Newnan*, 253 Ga. 457, 320 S.E.2d 747 (1984).

As one of the three branches, the Court, his mother, and his sister share a one-third undivided interest. (Pl.'s Mot. Disqualify Ex. 2; Stuckey Dep. at 11-13.) The Court acknowledges a financial interest in the Camp family farm, although not the one-third interest as alleged by Counsel.[32]

Richard P. Lindsey of the firm Webb, Lindsey, Collins, Jones & Wade, LLC (formerly Webb, Stuckey, & Lindsey) filed an application to change the zoning classification of the Camp family farm on August 28, 2000. The Coweta County Planning Department did not recommend approval and certain neighbors expressed opposition. The zoning application was withdrawn without being considered by the County Commissioners on June 5, 2001. The attorney representing the family was advised by letter dated January 8, 2002, that neither he nor his firm were authorized to take further action concerning the property.

While the zoning application was pending, the Court disqualified himself from cases involving either Coweta County or the Coweta County Commissioners. When the application was withdrawn and no further zoning changes were planned, no

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[32] The Court's interest is less than one-sixth. Although Plaintiff's Counsel alleges the interest to be one-third and, based upon that assumption, Counsel refers to the Court as a "liar" in correspondence and motions. Counsel apparently either misread or misunderstood the testimony of Mr. Stuckey. (Stuckey Dep. at 11-14.) In any event, the size of the interest is immaterial for the purpose of this motion. Any financial interest should be considered. Federal Judicial Center, Recusal: Analysis of Case Law under 28 U.S.C. §§ 455 & 144 (2002).

reason existed for continued disqualification. Counsel argues, however, that a future zoning change would increase the value of the property by thousands of dollars per acre.[33] Even assuming that a different zoning classification would add value, no plans exist to file a zoning application.[34] As Mr. Stuckey stated in his deposition, "[the zoning change] won't come up again in the future, at least within our lifetimes." (Stuckey Dep. at 33 11.3-4.)

The alleged relationship between the court's rulings in the present case and the individual County Commissioners is not clear. The individual Commissioners do not have any arguable financial interest in this litigation. Counsel alleges, however, that the Commissioners have a political interest in the outcome of the case. Counsel seems to argue that the individual Commissioners "benefit from perpetuating racial discrimination" and that rulings against Plaintiff would fulfill their "personal biases" and fill their "political war chests." (Pl.'s Mot. Disqualify at 7.) Therefore, Counsel argues, the Court's rulings against the Plaintiff in the present case would favorably

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[33] This again misrepresents Mr. Stuckey's testimony and ignores other fundamental factors necessary to increase the value of the property such as sewer, water, and access. (Stuckey Dep. at 17 11.13-25, 18 11.1-9.)

[34] It is a matter of public record that this property has been placed in a state program which penalizes sale or development, the Conservation Use Valuation Assessment. The family is in the process of renewing this program for an additional ten years.

influence the Commissioners' decision on a future zoning application.[35]

The record, however, contains no facts indicating any interest, political or otherwise, which the Commissioners have in the rulings of this case. The record contains only Counsel's unsupported speculation.

D. Affidavit filed pursuant to 28 U.S.C. § 144

Counsel filed an affidavit pursuant to 28 U.S.C. § 144 which requires a showing of the Court's actual bias. Several aspects of the affidavit are material to a Section 144 motion to disqualify a sitting judge and should be noted. The statute requires the affidavit to state that Plaintiff brings the motion in good faith. Counsel, however, has filed his own affidavit alleging that he, Counsel, brings the motion in good faith. No mention is made of Plaintiffs good faith, and the

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[35] Since the Commissioners are not parties to the present suit, and since the Defendant is the employee of a separate consititutional officer, the Sheriff, the argument they have political stake in this case is not logical. Furthermore, two of the five Commissioners serving at the time of the incident have been replaced in the 2002 election. One of the remaining Commissioners is African American. The lack of logic is also reflected in Counsel's desire to have this case heard in the State Court of Coweta County whose budget, staff, and salary are acted upon by the County Commissioners. O.C.G.A. § 15-7-1 (2001), *et. seq.* The only apparent reason for Counsel's motion is his concern about his claim for attorney's fees. The purpose of this order is not, however, to weigh the evidence. *Phillips v. Joint Legislative Comm. on Performance & Expenditure,* 637 F.2d 1014, 1019 (5th Cir. Feb. 1981).

affidavit indicates the motion is brought on Counsel's behalf.

Setting aside numerous statements of speculation and opinion, the Court's ruling on attorney's fees in the Cotton litigation is the only factual allegation of bias. The affidavit states: "I was counsel of record in *Cotton v. Todd, et al.,* Civil Action No. 3:93-CV-96-JTC and hold the opinion that Judge Jack T. Camp exhibited biases in that litigation and continues to hold the same biases at this time...." (Farmer Aff. at 2-3.) The affidavit continues: "Among the biases of United States District Court Judge Jack T. Camp that I identify are: ... a bias against persons who are discriminated against by public servants of governmental entities; and a bias against their counsel, in general, and Millard Farmer (the affiant and counsel of record in this case), in particular." (Farmer Aff. at 3.)

II. ANALYSIS

The policy of the recusal statutes is to protect the confidence of the public in judicial rulings. *Potashnick v. Port City Constr. Co.,* 609 F.2d 1101, 1111 (5th Cir. 1980). The statutes, however, are not intended to allow manipulation of the system to obtain a judge more to a counsel's liking. *Murray v. Scott,* 253 F.3d 1308, 1313 (11th Cir. 2001); *Carter v. West Publ'g Co.*, 1999 WL 994997 at *3 (11th Cir. 1999)(citing *FDIC v. Sweeny*, 136 F.3d 216, 220 (1st Cir. 1989)). Close cases are resolved in favor of recusal, *Murray*, 253 F.3d at 1313, but a judge has as much obligation not to recuse where "there is no occasion to do so as there is for him to do so when there is." *Hinman v. Rogers*, 831 F.2d 937, 939 (10th Cir. 1987).

A. Legal Standard for Disqualifying a Judge under 28 U.S.C. § 144

Counsel filed an affidavit pursuant to 28 U.S.C. § 144. Section 144 provides:

> Whenever a party ... files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein ... .
>
> The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, ... It shall be accompanied by a certificate of counsel of record stating that it is made in good faith. *Id.*

Section 144 requires a judge to recuse himself upon a "timely" and "sufficient" affidavit. *Id.* Assuming for the purpose of this motion that the affidavit is timely, the question presented is whether Counsel's affidavit is "sufficient" under the statute.

The Court determines only the legal sufficiency of the affidavit, not the truth of the factual allegations. *Berger v. United States*, 255 U.S. 22, 36, 41 S.Ct. 230, 234 (1921); *Phillips v. Joint Legislative Comm. on Performance & Expenditure*, 637 F.2d 1014, 1019 (5th Cir. Feb. 1981); *United States v. Menister,* 488 F.Supp. 1342, 1345-46 (S.D.Fla. 1980). "[T]he facts averred must be sufficiently definite and particular...; simple conclusions, opinions, or rumors are insufficient." *United States v. Sykes,* 7 F.3d 1331, 1339 (7th Cir. 1993); *Berger,* 255 U.S. at 34, 41 S.Ct. at 233 ("We may concede that [Section 144] is not

fulfilled by the assertion of `rumors or gossip.'"). The Court tests the affidavit's legal sufficiency by considering whether (1) the facts are material and stated with particularity, (2) the facts are such that, if true, would convince a reasonable person that bias exists, and (3) the facts show the bias is personal, as opposed to judicial in nature. *Parrish v. Bd. of Comm'rs of Ala. State Bar*, 524 F.2d 98, 100 (5th Cir. 1975). Bias against the party, not the attorney, is the issue under Section 144. 28 U.S.C. § 144. *See also In re Drexel Burnham Lambert, Inc.*, 861 F.2d 1307, 1314 (2nd Cir. 1998).

1. Discussion

Counsel's allegation that the Court is biased because of the Court's previous ruling on his attorney's fees relates to judicial rather than personal conduct. *Jaffe v. Grant,* 793 F.2d 1182, 1189 (11th Cir. 1986); *United States v. Serrano,* 607 F.2d 1145, 1150 (5th Cir. 1979). Prior rulings, even in the same case, almost never provide a basis for recusal. *Liteky v. United States,* 510 U.S. 540, 541, 114 S.Ct. 1147, 1150 (1994). Furthermore, a bias against counsel does not translate into a bias against Plaintiff.

Allegations of bias are insufficient when based on rumor, suspicion, opinion, or similar non-factual matters. *Sykes,* 7 F.3d at 1339. Although acknowledging he has not lived in Coweta County for many years,[36] Counsel states his affidavit is based on anecdotal information gleaned from growing up, living, and practicing law in the County. Counsel fails

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[36] In fact, Counsel departed the County before the Court began his practice of law there in 1975.

to cite any incident of bias. His unsupported allegations would not convince a reasonable person that bias exists. *Id.* In addition, Section 144 contemplates an affidavit of the party, not his attorney. *Roberts v. Bailar,* 625 F.2d 125, 128 (6th Cir. 1980) (holding a section 144 affidavit is insufficient where the counsel signed the affidavit rather than the party); *United States ex rel. Wilson v. Coughlin,* 472 F.2d 100, 104 (7th Cir. 1973).

The Court's ruling in a previous case, the only specific fact cited, does not support an allegation of bias against Plaintiff. The balance of Counsel's affidavit is unsupported opinion and mere speculation. The affidavit fails all three parts of the Parrish test, requiring extrajudicial conduct and particularized allegations of bias. The affidavit is legally insufficient to require disqualification or further action pursuant to 28 U.S.C. § 144.[37] Plaintiffs Motion to Disqualify pursuant to Section 144 [#15-1] is **DENIED.**

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[37] The allegations regarding whether a possibility of future re-zoning creates an appearance of impropriety will be considered under 28 U.S.C. § 455.

B. Legal Standard for Disqualifying a Judge under 28 U.S.C. § 455

Section 455 sweeps more broadly than Section 144. Where Section 144 only addresses actual bias, Section 455 addresses both actual bias and the appearance of bias, as well as certain factual situations which require automatic disqualification. 28 U.S.C.A. §§ 144, 455 (2002). Counsel argues that recusal is required under the following provisions of Section 455:

> (a) Any justice, judge or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
>
> (b) He shall also disqualify himself in the following circumstances:
>
> > (1) Where he has a personal bias or prejudice concerning a party; ...
> >
> > (4) He knows that he, individually or as a fiduciary,... has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;
> >
> > (5)(iii) [The judge knows he has] an interest that could be substantially affected by the outcome of the litigation. *Id.*

Under Section 455, the question is not whether the judge thinks he can rule fairly, but "`whether an objective, fully informed lay observer would entertain significant doubt about the judge's impartiality.'" *Thomas v. Tenneco Packaging Co., Inc.*, 293 F.3d 1306, 1329 (11th Cir. 2000), *cert. denied* 531 U.S. 1191, 121 S.Ct. 1190 (2001) (citing *Christo v. Padgett,* 223 F.3d 1324, 1333 (11th Cir. 2000)). Section 455 disqualification requires a more careful review of the factual situation alleged by Counsel. First, Counsel's argument rests on the premise that Coweta County has a financial interest in this litigation which creates the appearance of impropriety on the part of the Court.

Although the County is not a party, a judge's interest in a non-party with a financial interest in the litigation may warrant recusal. *Liljeberg v. Health Serv. Acquisition,* 486 U.S. 847, 861, 108 S.Ct. 2194, 2203 (1988). The Court will assume for the purpose of this motion that Coweta County has a financial interest based on providing a liability insurance policy to Defendant with a $25,000.00 deductible.

Mandatory disqualification under 28 U.S.C. § 455(b) will be considered first.

1. Discussion of 28 U.S.C. 455(b)(1) - Personal Bias and Prejudice

Section 455(b)(1) requires recusal where the judge has a personal bias or prejudice concerning a party. The standard is "whether a reasonable person would be convinced the judge was biased." *Brokaw v. Mercer County*, 235 F.3d 1000, 1025 (7th Cir. 2000) (citing *Hook v. McDade,* 89 F.3d 350, 355 (7th Cir.

1996)). Recusal is required only if actual bias is shown by compelling evidence. *Id.*

Counsel alleges bias because the Court and the Coweta County Attorney, at different times, were members of the same law firm and because the Court allegedly grew up in a society of racism. (Pl.'s Mot. Disqualify at 3, 5.) Counsel presents no evidence to support these accusations. The County Attorney and the Court were not members of the firm at the same time, and the Court left the firm in 1988. A reasonable person would not be convinced of bias on this basis.

Counsel also alleges that the Court is in step with the attitudes of the people living in Coweta County who "thrive on lingering racial biases." (Pl.'s Mot. to Disqualify at 3). Counsel however offers no evidence, much less compelling evidence, of the alleged bias of either the Court or the citizens of the County. Indeed this wide net of bias would apply to Counsel as well as the Court since Counsel gathered his information from "being born in, living in, engaging in business in, practicing law in Coweta County." (Farmer Aff. at 2).

For these reasons, as well as the discussion on personal bias pursuant to Section 144, above, recusal is not required or appropriate pursuant to Section 455(b)(1). The motion to disqualify on that basis is **DENIED.**

2. Discussion of 28 U.S.C. §§ 455(b)(4), (b)(5)(iii) - Financial or Substantial Interest

Sections 455(b)(4) and (b)(5)(iii) prohibit judges from presiding over cases where they have either a financial interest in, or another interest that would be substantially affected by, the outcome of the litigation.

Under these provisions, the alleged financial interest must be a direct interest, not a remote or contingent interest. *In re Va. Elec. & Power Co.,* 539 F.2d 357, 366-67 (4th Cir. 1976); *Jefferson County v. Acker,* 92 F.3d 1561, 1581-82 (11th Cir. 1996), *vacated on other grounds,* 520 U.S. 1261, 117 S.Ct. 2429 (1997).

While the Court does own property located in Coweta County, a general interest as a resident, taxpayer, or property owner does not require recusal because it is not direct or immediate but remote or contingent. *In re Houston,* 745 F.2d 925, 929 (5th Cir. 1984). Although Counsel alleges a possible zoning application is a financial or substantial interest, the possible refiling of the application is also remote, contingent and speculative. *Gas Utils. Co. of Ala. v. S. Natural Gas Co.*, 996 F.2d 282, 283 (11th Cir. 1993); *Jefferson County*, 92 F.3d at 1581-82. No facts in the record indicate a future zoning application will be filed. In fact, the Stuckey deposition indicates it will not "in our lifetimes." (Stuckey Dep. at 33 11.3-4.) Plaintiffs Motion to Disqualify pursuant to Section 455(b)(4) and (b)(5)(iii) [#15-1] is **DENIED**.

3. Discussion of 28 U.S.C. § 455(a) - An Appearance of Partiality

The remaining question is whether there is any appearance of bias. The only allegation of Counsel based upon particular facts as distinguished from rumor, speculation, suspicion, opinion, and similar non-factual matters relates to a previous zoning application which was withdrawn. *Nichols v. Alley,* 71 F.3d 347, 351 (10th Cir. 1995). Appearance is judged from the stance of the reasonably objective observer, not a person unduly suspicious or concerned about a

trivial risk that a judge may be biased. *In re Mason,* 916 F.2d 384, 386 (7th Cir. 1990); *Matter of Continental Airlines,* 981 F.2d 1450, 1462 (5th Cir. 1993).

No reasonably objective observer would harbor doubts about the Court's impartiality for three reasons: (1) the mere possibility of a future application does not create a present requirement to recuse; (2) furthermore, no evidence indicates that the individual County Commissioners have any interest in the Court's rulings in this case; and (3) a previous application does not create a permanent disqualification.

First, the possibility that a zoning application might be filed in the future is insufficient to create the appearance of partiality. An analogous situation is the possibility of an employment offer to a judge from a law firm. A prominent local law firm potentially may offer employment at any time; yet, a judge is not required to disqualify until the offer materializes. *In re Continental Airlines*, 901 F.2d 1259, 1262 (5th Cir. 1990) ("[A] judge could never be expected to disqualify himself based on some fact he does not know, even though the fact is one that perhaps he should know or one that people might reasonably suspect that he does know."). Similarly, an application for zoning may be filed in the future, but until some decision is made to do so, it has not materialized. No facts offered in support of the motion indicate that such application is likely or will be filed again.

Second, Counsel's argument that the Court could curry favor with individual Commissioners by saving official County funds in the form of the County's

deductible under an insurance policy is not compelling. As individuals, the Commissioners have no more financial interested in this situation than other taxpayers of the County.

Counsel, however, argues the Court's rulings in this case will help the Commissioners fill their "political war chest." This argument is even less compelling. First, the Commissioners have no political stake in this lawsuit which is against an employee of the Sheriff and which makes no allegations with regard to the individual Commissioners or their official conduct. Second, the argument rests upon the assumption that Coweta County's population is racist and that a ruling against an African-American would somehow increase the Commissioners' political popularity. The record contains no evidence supporting this assumption. Counsel's allegations are based totally on rumor, speculation, suspicion, etc. In any event, future Commissioners when a possible zoning application may be filed will likely be different individuals. In point of fact, two of the five were replaced in the last election. No reasonably objective observer would entertain significant doubt about the Court's impartiality where the alleged recipients of the bias, the Commissioners, receive no benefit from the Court's rulings.

Third, a past, zoning application does not result in permanent disqualification. A comparable situation occurs where a former law clerk represents a party before the judge. Although such situations may create a temporary appearance of partiality, the judge is not required to recuse forever from all such cases. *United States v. Hollister,* 746 F.2d 420, 425-26 (8th Cir.

1984) ("We do, however, endorse the principle that a certain insulation period should pass before a judge sits on a case in which his or her former law clerk acts as counsel."); *Holbrook v. Nationwide Mut. Ins. Co.*, 12 Fla. L. Weekly Fed. D. 299, 1999 WL 737956, at *2 (S.D.Fla. 1999). Similar also is the appearance of a judge's previous law firm which can appear before the judge after a reasonable time. 2 Administrative Office of the U.S. Courts, *Guide to Judiciary Policies and Procedures,* ch.5 § 3.31 (2001). Courts recognize that time attenuates the appearance of partiality. Similarly, while a pending zoning application requires recusal, a previous application does not require recusal in perpetuity.

A reasonably objective observer would not question the Court's impartiality based on an application for zoning that was filed and later withdrawn without being acted upon. No further applications are planned. If that possibility materializes, the Court will be bound to recuse. Recusal, however, is not required pursuant to 28 U.S.C. § 455(a) based on a speculative possibility of what may happen in the future. As such, Plaintiff's Motion to Disqualify [#15-1] on this ground is **DENIED.**

C. Manipulating the Recusal Statutes to Obtain a Favorable Judge

Parties using baseless accusations of bias cannot be allowed to manipulate the judicial system for strategic reasons. *Carter v. West Publ'g Co.,* 1999 WL 994997 at *3 (11th Cir. 1999). Judge-shopping should be discouraged, so a judge should not recuse for imaginary reasons. *Murray v. Scott,* 253 F.3d 1308, 1313 (11th Cir. 2001). Counsel's unsupported

allegations of the Court's bias against this Plaintiff and for the Defendant appear calculated to obtain a more sympathetic judge. The motion as a whole indicates that obtaining a more favorable ruling on attorney's fees is the motivating factor. Such manipulation is not appropriate. Counsel is not entitled to the judge of his choice.

III. CONCLUSION

Plaintiff does not present a legally sufficient affidavit of actual bias pursuant to 28 U.S.C. § 144. Furthermore, the Court has no interest in the litigation which requires recusal under 28 U.S.C. § 455. Therefore, Plaintiffs Motion to Disqualify [#15-1] is **DENIED.**

SO ORDERED, this 21 day of February, 2003.

S/_____
JACK T. CAMP
UNITED STATES DISTRICT JUDGE

APPENDIX E

Filed in Clerk's Office U.S.D.C. –Newnan
May 16, 2002 LUTHER D. THOMAS, Clerk
By: RH, Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

STACY ALLEN DRAPER,
Plaintiff,

v. **CIVIL ACTION NO. 3:02-CV-10-JTC**

CLINTON D. REYNOLDS,
Defendant.

ORDER

This case is before the Court on Defendant's Motion to Strike Portions of the Complaint [#2-1]. The case arises out of a traffic stop and resulting altercation that occurred on July 19, 2001. According to the Complaint, Defendant violated Plaintiff's constitutional rights and denied him "protection from illegal searches and seizures, illegal arrest, and his right to freedom of speech together with due process and equal protection of the law ...." (Compl. ¶ 7.5). Plaintiff contends that Defendant failed to "conduct himself in an appropriate manner in dealing with persons whom he stops for traffic violations, including but not limited to the language that he uses, the timeliness of advising the reason for the stop and the

use of force without justification." (Compl. ¶ 7.74). As a result of Defendant's allegedly unconstitutional conduct, Plaintiff seeks damages under both 42 U.S.C. § 1983 and state law.

Soon after the Complaint was filed, Defendant removed the case to federal court. Defendant now moves to strike certain portions of the Complaint pursuant to Rule 12(f) of the Federal Rules of Civil Procedure. Rule 12(f) authorizes the Court to "order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." In this case, Defendant moves to strike paragraph 6.24 of the Complaint, a seventeen page factual description and motion to dismiss criminal charges that was originally filed in a state court criminal proceeding. While the Court appreciates the "simplistic narrative" offered by Plaintiff in the form of a poem, paragraph 6.24 of the Complaint must be stricken under Rule 12(f) because it is both redundant and scandalous. Therefore, the Clerk is **DIRECTED** to strike Paragraph 6.24 from the Complaint. The Court's ruling will not prejudice Plaintiff as the first eleven pages of the Complaint adequately describe the facts surrounding this lawsuit and the remaining nine pages appropriately set forth the causes of action.

Pursuant to 28 U.S.C. § 455, "[a]ny justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." In this case, Plaintiff asserts that a recusal is warranted based upon the undersigned's status as a landholder and taxpayer in Coweta County. (Pla.'s Certificate of Interested Persons); [#5-1]. However, both state and federal

courts have recognized that "an interest which a judge has in common with many others in a public matter is not sufficient to disqualify him. Where the interest of a judge as a resident, taxpayer or property owner is not direct or immediate but remote or contingent, such interest ordinarily is not sufficient per se to disqualify him." *In re City of Houston*, 745 F.2d 925, 931 (5th Cir. 1984)(quoting 48A C.J.S. Judges § 123 (1981)); *see also City of Valdosta v. Singleton*, 28 S.E.2d 759 (Ga. 1944)(judge qualified to act in suit challenging validity of city's proceeding to acquire an electric distribution system, though suit was brought on behalf of taxpayers and the judge fell within this class); *Elliott v. Scott*, 25 S.W.2d 150, 151 (Tex. 1930)(judge not disqualified because "he has no more interest [in the subject matter of the litigation] than has any other taxpaying citizen" of the county). Because the undersigned's interest as a taxpayer and landowner is "not direct or immediate but remote or contingent," disqualification is not warranted. *See also In re New Mexico Natural Gas Antitrust Litigation*, 620 F.2d 794 (10'h Cir. 1980)(discussing the principle that a judge's being a beneficiary as a member of the public is too rarified an interest to require recusal); *Booth v. Internal Revenue Service*, 1994 WL 563437 (l0th Cir. October 14, 1994)(determining that no "reasonable person, knowing all relevant facts, would harbor doubts" about the undersigned's impartiality).

Similarly, a recusal is not warranted based upon the undersigned's previous affiliation with the law firm representing the Coweta County Board of Commissioners ("Board of Commissioners"). A review of the docket reveals that the Board of

Commissioners is not a party to the present lawsuit and that the undersigned's former firm has not made an appearance in this case. However, even if a representative of the undersigned's former firm subsequently makes an appearance, a recusal is not warranted. Not only has the undersigned been disconnected from his former firm for fourteen years, but he also did not represent the Board of Commissioners during the time in which he was a member. In fact, the firm did not begin representing the Board of Commissioners until after the undersigned was appointed to the bench. As a result, it cannot be said that the undersigned's "impartiality might reasonably be questioned" in this case. 28 U.S.C. § 455; Code of Conduct for United States Judges, Canon 3(c)(1); *see also Guide to Judiciary Policies and Proceedings: Code of Conduct for Judges and Judicial Employees* § 3.3-1(b), p. V-41 (2001)("A judge must recuse in all cases handled by the former law firm until all payments due the judge have been received, and for a reasonable time thereafter"); *Committee on Codes of Conduct*, Advisory Opinion No. 11 (January 16, 1998)("It cannot be that judges must recuse from all cases handled by a law firm simply because judges have firm members as friends").

SO ORDERED, this 13 day of May, 2002.

S/ _____
JACK T. CAMP
UNITED STATES DISTRICT JUDGE

APPENDIX F

Filed U.S. Court of Appeals Eleventh Circuit
Jul 06 2004 Thomas K. Kahn Clerk

UNITED STATES COURT OF APPEALS FOR THE
ELEVENTH CIRCUIT
No. 03-14745

STACY ALLEN DRAPER,
Plaintiff-Appellant,
v.
CLINTON D. REYNOLDS, Deputy,
Defendant-Appellee.

On Appeal from the United States District Court for the Northern District of Georgia.

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

(Opinion _____, 11th Cir., 19__, ___F.2d___).

Before: EDMONDSON, Chief Judge, HULL, Circuit Judge, and EDENFIELD *, District Judge.

PER CURIAM:

The Petition(s) for Rehearing are Denied and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

S/ Frank M. Hull

UNITED STATES CIRCUIT JUDGE

* Honorable B. Avant Edenfield, United States District Judge for the Southern District of Georgia, sitting by designation.

APPENDIX G

Amendments to the United States Constitution

First Amendment
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Fourth Amendment
The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Fifth Amendment
No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness, against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Seventh Amendment

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Fourteenth Amendment (Section 1)

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Federal Statutory Provisions

28 U.S.C. §144

Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good

cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith.

28 U.S.C. §455

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

* * *

(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

* * *

(iii) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

42 U.S.C. §1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia

State Statutory Provisions

O.C.G.A. § 16-8-41(a)

(a) A person commits the offense of armed robbery when, with intent to commit theft, he or she takes property of another from the person or the immediate presence of another by use of an offensive weapon, or any replica, article, or device having the appearance of such weapon. . . .

O.C.G.A. § 16-10-24

(a) Except as otherwise provided in subsection (b) of this Code section, a person who knowingly and willfully obstructs or hinders any law enforcement

officer in the lawful discharge of his official duties is guilty of a misdemeanor.

(b) Whoever knowingly and willfully resists, obstructs, or opposes any law enforcement officer, prison guard, correctional officer, probation supervisor, parole supervisor, or conservation ranger in the lawful discharge of his official duties by offering or doing violence to the person of such officer or legally authorized person is guilty of a felony and shall, upon conviction thereof, be punished by imprisonment for not less than one nor more than five years.

O.C.G.A. § 16-11-106(a) and (b)

Possession of firearm or knife during commission of or attempt to commit certain crimes.

(a) For the purposes of this Code section, the term "firearm" shall include stun guns and tasers. A stun gun or taser is any device that is powered by electrical charging units such as batteries and emits an electrical charge in excess of 20,000 volts or is otherwise capable of incapacitating a person by an electrical charge.

(b) Any person who shall have on or within arm's reach of his or her person a firearm or a knife having a blade of three or more inches in length during the commission of, or the attempt to commit:

(1) Any crime against or involving the person of another;

(2) The unlawful entry into a building or vehicle;

(3) A theft from a building or theft of a vehicle;

(4) Any crime involving the possession, manufacture, delivery, distribution, dispensing,

administering, selling, or possession with intent to distribute any controlled substance or marijuana as provided in Code Section 16-13-30, any counterfeit substance as defined in Code Section 16-13-21, or any noncontrolled substance as provided in Code Section 16-13-30.1; or

(5) Any crime involving the trafficking of cocaine, marijuana, or illegal drugs as provided in Code Section 16-13-31,

and which crime is a felony, commits a felony and, upon conviction thereof, shall be punished by confinement for a period of five years, such sentence to run consecutively to any other sentence which the person has received.

O.C.G.A. § 40-8-23(d)

(d) Either a taillight or a separate light shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of 50 feet to the rear. Any taillight or taillights, together with any separate light for illuminating the rear registration plate, shall be so wired as to be lighted whenever the headlights or auxiliary driving lights are lighted.

Other Authority

Code of Conduct for United States Judges, Canon 3C(1)(c):

C. Disqualification

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might

reasonably be questioned, including but not limited to instances in which:

* * *

(c) the judge knows that, individually or as a fiduciary, the judge . . . has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be affected substantially by the outcome of the proceeding.

Excerpts from "Policy and Operations Manual" of the Coweta County Sheriff's Office

Chapter V: Conduct

Chapter V, C-4(d), "Violations may be charged under conduct unbecoming an Employee or under a specific rule. Typical examples of conduct unbecoming an Employee includes, but are not limited to: 1. profane language in public…"

Chapter V, C-14: "Mistreatment of Prisoners. When an employee exceeds their authority by unreasonable use of force or negligent conduct which results in injury to an arrestee or inmate, the sanctity of the law, which they have sworn to uphold is violated, and they may be subject to discipline and/or civil liability."

Chapter V, D-2(d-f),
"2. Respect for Persons

The Department can only provide adequate services when its employees cooperate with each other fully, and when citizens have a feeling of respect

toward the Department. Therefore all employees shall:

* * *

Employees shall avoid the use of profane or insulting language or menacing gestures toward or in the presence of other employees or the public.

Employees should always endeavor to provide citizens with information requested, and any refusal must be both necessary and polite, with the reason for refusal, if the circumstances or time permits.

Employees shall keep in mind that when making an arrest, warrant search, or issuing a traffic citation, the other person's attitude will often depend on the respect and fairness the employee shows. In these critical situations, the employee should not attempt to be humorous or insulting.

Chapter VIII: Arrest

Chapter VIII, 10. "NOTE: If the arrest is unlawful, a person has the right to resist the arrest. **All arrests made by officers of the Coweta County Sheriff's Office shall be lawful arrests.**" (emphasis in original)

Chapter IX: Search and Seizure

B. Rules and Regulations

4. Vehicle Searches

d. Arrest of Occupant

If a person is arrested after a vehicle stop, the passenger compartment of the

vehicle may be searched incident to the arrest.

5. Vehicle Inventory

a. Seizure of Vehicles

For an inventory of a vehicle to be valid, the Deputy's custody of the vehicle must be lawful (See vehicle impound/ inventory).

b. Justification

The inventory must be conducted to fulfill the Deputy Sheriff care-taking function of securing the contents of the vehicle.

c. Nature of Inventory

The inventory must be routine part of Standard Sheriff's Office procedure for impounding vehicles, rather than a pretext for an investigatory search, and may not extend to locked luggage.

Chapter XI: Use of Force

B. RULES AND REGULATIONS

3. Non-Deadly Force

a. Guidelines

1. Identification – Deputies must make their identity as a law enforcement officer known before any use of force, except when circumstances prohibit.
2. Deputies shall never use force in response to mere verbal provocation

or abusive language directed at the Deputy.

Deputies will refrain from using mannerisms, profanity, or insults that might be expected to incite an attack.

* * *

6. The Use of Force Continuum is as follows:

a. Verbal Commands
b. Advanced Taser M26
c. Chemical sprays
d. Physical restraint (open or soft hand) techniques
e. Closed or hard hand techniques
f. Impact weapons
g. Deadly force

Chapter XIV: Records/Information Management

I. CRIMINAL HISTORY FILE

1. Identification Number: A single numbering series is employed for all incidents in which a report is filed. The case number is assigned by the Communications Center and is the starting point in the database for all calls received and generated by the Coweta County Sheriffs Office. Each case number is computer/manually assigned in sequential order.

* * *

3. Criminal Justice Information Rules

Georgia Laws 1973, P. 1314, as amended, provide specific criminal penalties for unlawfully accessing or disseminating Criminal Justice Information (defined in GCIC Council Rule 140-1-1.02).

Access to Criminal Justice Information, as defined in GCIC rule 140-1-1.02 (amended), and dissemination of such information is governed by State and Federal Laws and by GCIC Council Rules. Criminal Justice Information cannot be accessed or disseminated by any employee except as directed by superiors or as authorized by approved standardized operating procedures, which are based on controlling State and Federal Laws, relevant federal regulations, and the rules of the GCIC Council.

* * *

"Criminal History Record Information (CHRI) consists of an individual's identifiable description, arrests, detentions, indictments or other formal criminal charges, and dispositions of those charges. This information has been collected by criminal justice agencies and may be obtained from Georgia, other states and Federal agencies.

The computerized criminal History files for the state of Georgia are maintained by the Georgia Criminal Information Center.

It is violation of NCIC policy and the CCIC Council Rules to use NCIC (III) criminal history record information for licensing or non-criminal

justice employee checks. NCIC information may only be used for criminal investigations and criminal justice employment.

All requests and responses for Criminal History Record Information (CHRI) which are no longer needed MUST be destroyed by means such as shredding or burning. It is the responsibility of the computer terminal manager to destroy CHRI which is no longer needed.

* * *

Chapter XX: Training Operation Procedures

J. Advanced Taser M26

1. Purpose

This procedure sets forth the Coweta County Sheriffs Office policy regarding deployment of the Taser International ADVANCED TASER M26 (hereafter referred to as M26).

2. Information

The M26 is a less-lethal Conducted Energy Weapon that uses propelled wires to conduct energy to a remote target, thereby controlling and overriding the body's central nervous system. It uses an electro-muscular disruption system with a 26-watt electrical signal to temporarily override the central nervous system and directly control the skeletal muscles. This causes an uncontrollable contradiction of the muscle tissues, allowing the M26 to physically debilitate a target regardless of pain tolerance or mental focus. The M26 affects both the sensory and motor nervous systems, both

stunning and physically incapacitating the target. It has no long term effects.

The M26 fires two probes up to a distance of twenty-one (21) feet from a replaceable cartridge. These probes are connected to the weapon by high-voltage insulated wire. When the probes make contact with the target the M26 transmits electrical pulses along the wires and into the body of the target, through up to two inches of clothing.

The M26 also has contact probes at the front of the unit that allows a back-up touch stun.

The M26 has a data port. It stores the time and date when it was fired. This data protects officers from claims of excessive use of force by providing complete and accurate documentation of each firing.

The M26 is an alternative, non-deadly force option. The M26 may be used to control a non-compliant subject. The M26 is deployed as an additional police tool, and is not intended to replace firearms or self-defense techniques.

The M26 is NOT a substitute for deadly force. It should not be used in a deadly force situation without proper attention to officer safety and deadly force backup.

3. Procedure
   a. M26s shall be issued to and used only by officers who have completed the Coweta County Sheriff's Office M26 Training Program.
   b. Only properly functioning and charged M26's shall be carried in the field.
c. Each discharge, including accidental discharge, of an M26 shall be investigated and documented utilizing an ADVANCED TASER Use Report (ATUR).
d. Keep hands away from the front of the unit at all times unless the safety slide is forward and the M26 is deactivated.
e. Aim at the upper torso. Never aim the M26 at the eyes or face. It is laser-sighted. The top probe will follow the front and rear sights and the laser sight; the bottom probe will travel at an eight (8) degree downward angle below the aim point/laser-sighted area. The bottom probe drops one foot for every seven feet that it travels.
f. The M26 is programmed to give a five-second "electrical current." The operator can shorten or extend this time. During this time, do not touch the probes, within two inches of the probes, or between the probes in order to avoid receiving the same "electrical current" as the target. Avoid stepping on or tripping over the wires.
g. Probes, which have penetrated the body, should be treated as contaminated needles.
h. Do not fire the M26 near flammable liquids or fumes. The M26 can ignite gasoline or other

flammables. Some self-defense sprays are flammable and would be extremely dangerous to use in conjunction wit the M26. Do not deploy the M26 in highly flammable drug labs. Avoid use on known pregnant females.

i. Always replace Air Cartridges by their expiration date and use expired cartridges for training only.

* * *

7. Officers discharging an M26 shall:

a. Prior to the use of the M26, if practical, notify other officers on the scene of the imminent deployment of the M26 to prevent officer surprise and sympathetic shootings. Recommended notification is: "TASER".

b. Tactical Deployment

(1) Use common sense.

(2) Use verbal commands and point laser sight at subject prior to firing.

(3) Use to prevent violent confrontation.

(4) Have a second Air Cartridge present or a second M26 ready to fire in case of a miss or malfunction.

(5) When possible, have a backup officer (depending on the situation, possibly with deadly force option).

(6) Use cover and distance to ensure officer safety.

(7) Optimum range is twelve to eighteen feet. Minimum range is three feet. Maximum range is twenty-one feet. If target runs, officer must run also to prevent wire breakage.

(8) Aim at center of mass and from rear if possible. Watch for thick and/or loose clothing. If probes hit clothing, the electrical current can only penetrate from maximum of two inches away.

(9) Avoid use on slanted rooftops or on the edge of tall buildings.

c. Notify immediate supervisor following the use of the M26.

d. Persons who have been subjected to the M26, or the probes, shall be treated as follows:

(1) Secure the subject;

(2) Provide appropriate first aid;

(3) Request EMS if secondary injuries warrant;

(4) Remove the probes at the scene, using proper care and techniques, unless they are in the face, neck, groin, or female breast areas. In these cases only, transport to Emory-Peachtree Regional Hospital for removal by medical personnel;

(5) Charge and admit the subject to the jail or other facility as appropriate.

e. Complete and Incident Report and ATUR.

f. The M26 cartridge and probes used shall be maintained a evidence. Since the probes will probably have blood on them (biohazard), the officers should wear protective latex gloves when handling. The probes should be inserted (sharp end first) into the portals they originally were deployed from (to prevent further danger

from the sharp ends) and tape placed over the portals to secure the probes in the cartridge. The wires should be would around the cartridge. Place the entire cartridge into an evidence envelope and submit with Incident Report.

NOTE: The M26 is a sensitive electronic product and costly device that should be encased in its protective holster when not in use. Care should be taken to avoid dropping the M26 and to assure that is adequately secured while being transported in vehicles. Defective M26s and M26 cartridges shall be returned to the M26 training staff. The faceplate of the M26 cartridge is secured to the cartridge body. Direct sunlight, heat or pressing on the faceplate may cause the cover to disengage from the cartridge. Cartridges with loose faceplates should be returned to the M26 training staff. Do not place cartridges near static electricity.

9. Use of Force Issues

a. The use of the M26 constitutes a Use of Force.

b. The M26 is placed on the Use of Force Continuum after Verbal Commands, but before chemical sprays, physical restraint (open or soft hand) techniques, closed or hard hand techniques, and impact weapons.

APPENDIX H

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

Stacy Allen Draper,
Plaintiff,

v. Civil Action No.
3-02-CV-10-JTC

Clinton D. Reynolds,
Defendant

STATE OF TEXAS
COUNTY OF TARRANT

AFFIDAVIT OF STACY ALLEN DRAPER

Before me the undersigned authority personally appeared Stacy Allen Draper, who after being duly sworn, deposes and states:

I am the plaintiff in the above-styled case.

I give this affidavit for all purposes allowed by law.

I am an African American person who is a professional truck driver. I live outside of the State of Georgia with my spouse and two children.

On the evening of July 19, 2001, I was a contract operator of a tractor trailer for Texas Star Express. I owned the tractor. The trailer that I was pulling with my tractor was a pool trailer, which was under the control of Texas Star Express.

I was earning a living for myself and my family at the time of my involvement with Clinton D. Reynolds as an independent contractor driving over-the-road for

Texas Star Express. This motor carrier with which I had a contract, Texas Star Express, is a nationally recognized ICC carrier, with approximately seven terminals in various parts of the United States.

As the result of the acts of Clinton D. Reynolds and others conspiring with him, I was required to terminate my contractual relationship with Texas Star Express. After being arrested by Clinton D. Reynolds, I was informed by Julie Poncey, of Texas Star Express, that a person identifying himself as the arresting officer with the Coweta County Sheriff's Department informed her that he believed I was on drugs.

Even though I had a very good record with Texas Star Express, because of the phone call from a person identifying himself as the arresting officer with the Coweta County Sheriff's Department reporting that I was suspected of being on drugs, I was required to go to Atlanta and take a drug test at his own expense upon being released from jail on the day after my arrest at just before midnight on July 19, 2001.

I was not on drugs and the drug test was negative; however, because of the contact made to Texas Star Express by a person identifying himself as the arresting officer with the Coweta County Sheriff's Department and the late delivery of my load because of my illegal arrest, after that time I was unable to get enough loads from Texas Star Express to earn an adequate living to support my family.

Clinton D. Reynolds and persons conspiring with him, by knowingly and intentionally making false statements about me, which included statements that I had a tag light violation, that I obstructed an officer,

and, while not charging me with any type of substance abuse, reporting that I was using drugs, slandered, defamed and libeled me to the extent that they interfered with my contract with Texas Star Express to the extent that they effectively voided the financial benefits of the contract.

Clinton D. Reynolds and those conspiring with him, acting with malice and willful intent, attempted to and did damage my reputation in my profession and interfered with my contract with Texas Star Express causing me damages.

The acts of Clinton D. Reynolds toward me were willful, wanton, and outside the scope of the authority of Clinton D. Reynolds, who was acting with actual malice with the intent of causing injury to me in the performance of his official functions.

In carrying out his illegal and unconstitutional acts against me, Clinton D. Reynolds made knowingly false statements to lawful authorities and the courts in an unsuccessful attempt to prosecute me for acts that I did not commit and acts that he knew I did not commit.

After I filed this civil action to recover damages for the unconstitutional and illegal conduct of Clinton D. Reynolds and long after all criminal charges against me were not prosecuted and had ended, I learned during depositions that persons conspiring with Clinton D. Reynolds wrote the records custodian of the United States Army, attempting to obtain my military records. The letter feigned that the records were needed for a criminal investigation against me, when in truth they were for use in this civil case. A

copy of the letter that I am describing is Attachment 1 to this affidavit, along the handwritten draft.

The events leading up to my involvement with Clinton D. Reynolds began on the evening of July 19, 2002; I was driving my tractor trailer north on Interstate 85 pursuant to my contractual relationship with Texas Star Express.

The trailer that I was pulling on that night was plastered with logos and large lettering on both sides and on the rear identifying it as a Texas Star Express trailer. My tractor was also noticeably identified as a truck under the control of Texas Star Express. All of the appropriate ICC identification was noticeably displayed on the unit. Without any question, my tractor trailer unit was identified with the makings and identification of Texas Star Express that could be read by a person with normal eyesight from over 200 feet away.

I was hauling a load which, as I remember it, was a "shipper's load and count" sealed load. This phrase to me means that the shipper or at least Texas Star Express loaded and sealed the trailer before I received it. This also meant that I was not responsible for the count of the items on the trailer, if I delivered the trailer with the seal unbroken.

As I remember from the bill of lading and from viewing the videotape, the load contained pallets of battery casings from a national manufacturer, which was for delivery to a national chain merchandiser in the Carolinas. This load was not so different from many loads, which I hauled at that time. It was normal for me to pick up a sealed trailer, like this load, at a

terminal or a drop point and then deliver it sealed to another terminal or directly to the receiver.

As I was preceding north on I-85 on the night of July 19, 2001, with the pace of my driving and rest stops, I was on schedule to deliver the load the following day as expected, until I encountered the trouble with what I consider to be the unconstitutional and illegal stop and arrest in Coweta County, Georgia by Clinton D. Reynolds.

On that night, for about thirty miles before I approached the 45 mile marker on I-85 in the state of Georgia, I heard from other truckers on my CB radio that there were law enforcement officers in the median of I-85. I did not expect that the presence of law enforcement officers presented me with any type of speeding problem, as my load was on time and also, primarily because I own my own truck, it is to my advantage not to overwork the engine on the truck and thereby increase my maintenance and fuel costs by speeding in an area such as that part of I-85 in Georgia, which is already generous with its speed limit requirements.

Near the 45 mile marker in Georgia, as I had been informed, I saw a bunch of vehicles appearing to be that of law enforcement officers; they were stopped in the median and facing perpendicular to I-85. Carefully obeying the law, I passed three or four of these vehicles, but actually, more than observing the patrol cars, I was observing the heavy road traffic that had bunched up apparently because everyone appeared to be aware of the presence of patrol cars.

As I was passing one of the patrol cars with its headlights on, the officer in the car began flashing the

car's blue light as it headed onto I-85. At this time, there was another vehicle following close behind my trailer, which driver apparently felt a bit restrained from speeding past me in the presence of the numerous law enforcement vehicles in the median. The distance between my trailer and the vehicle directly behind me was so close that while the patrol car with its blue light flashing was initially entering I-85, the patrol car could not get immediately get behind my tractor trailer.

As the patrol car continued flashing its blue light, I realized that the patrol car was in all likelihood flashing its blue light for me to stop. Accepting that the patrol car was attempting to stop me, I slowed down and pulled off I-85 onto the right shoulder of the north bound lane.

When I pulled my tractor trailer off the roadbed to the right side of I-85, I allowed my truck engine and air conditioner to continue to run, as is common when I stop my truck for a short period of time. In preparation for the law enforcement officer's initial inquiry, I turned on my cab light and began locating my driver's license and medical card. These are the two items that law enforcement officers usually request of truckers after a stop.

After locating my driver's license and medical card, I then turned off the cab light and waited for the law enforcement officer to approach the cab of my truck from the driver's side of my cab.

My tractor cab has large, clear, untinted glass windows. The cab of my truck also has a rather long dual step running board. However, without using either of the dual steps leading to the interior of the

cab of my truck, a person who is six feet tall standing flat footed on the ground can easily observe both the driver's face and upper torso. The bottom of the clear, untinted side window glass on my truck was 6 feet and 6 inches from the ground.

The law enforcement officer involved in the stop of my truck was a person I now know to be a Coweta County Deputy Sheriff, Clinton D. Reynolds. He is approximately six feet tall.

I sat in the cab of my truck, expecting the law enforcement officer to approach on the driver's side, as I have observed to be the usual side of trucks and other vehicles that law enforcement officers approach after making a stop on a highway. I did not see Clinton D. Reynolds approaching on the driver's side of my cab as I expected.

I have viewed what is referred to as the "second version" and "third version" of the videotape in footnote 1 of the Memorandum of Law in Response to the Motion for Summary Judgment of Clinton D. Reynolds.

Viewing the videotape, in both versions, I can now see that Clinton D. Reynolds came along the passenger side of my tractor trailer to approach me. On that night, I did not notice, that instead of approaching my truck on the driver's side of my cab as I expected, that Clinton D. Reynolds was in the grassy area, some fifteen or more feet away from the truck cab's passenger side of until I saw the beam of his flashlight on my truck.

The window glass on the passenger side of my truck was also clear, clean and untinted. When Clinton D. Reynolds was on the passenger side of the truck

cab instead of the driver's side, and standing some distance from the truck, I assumed my tractor was undergoing some type of DOT inspection.

Observing that Clinton D. Reynolds was on the passenger side of my truck, by looking out of the passenger side window, I attempted to observe exactly what was happening on that side of my truck cab. My truck did not have a bench type of front seat, as most cars and small trucks have, but instead my truck had two separate seats separated by an open space with mechanical and other essentials located between the seats. While I was attempting to shift positions in the front of my truck and look out of the passenger side of my truck, Clinton D. Reynolds shined the strong beam of his flashlight into the cab of my truck; he shined the light directly in my face. Clinton D. Reynolds kept the beam of his intensely lit flashlight on my face to the degree that the strong, intense light from his flashlight blinded my vision.

I managed to reach the window control and lowered the passenger side window in order to both hear what Clinton D. Reynolds was saying and also to be heard better by Clinton D. Reynolds. In a very civil manner, I asked Clinton D. Reynolds to please stop flashing the light in my eyes.

While this was occurring, I was still thinking that rather than a traffic stop, the person outside my truck cab on the passenger side was a DOT inspector, attempting to tell me that there was something wrong with my truck such as a blown tire or maybe a DOT officer was doing a periodic DOT check beginning at my running gear of my truck. I have noticed DOT

officers parked with other traffic control officers on occasions.

At the time, when Clinton D. Reynolds was first shining his light in my eyes, I wasn't angry and certainly not considering even thinking about expressing anger or displeasure, because I deal with hundreds of law enforcement officers each month as I pass through numerous weigh stations and state port of entry check points on every trip. Yielding to the authority of law enforcement officers is a daily part of my working life; they have their job and I have mine and I respect their responsibilities and duties. As a military veteran of many years of service, I am certainly accustomed to taking orders and showing respect.

Upon being stopped by the blue light of the car driven by Clinton D. Reynolds, I was preparing to be, if anything, overly friendly to the law enforcement officer, so if something was wrong with my truck or trailer that I could obtain assistance with a quick repair, receive a warning or maybe be released without a warning. It is just common sense for me to please the officer and certainly, not to anger a person who could delay the delivery of my load and cause me trouble for delivering the load late.

Delivering a load late is something that not only irritates the dispatcher, but causes the dispatcher not to give a contractor such as me good revenue producing loads in the future. On-time delivery is an important aspect of my performance evaluation. Therefore, my initial goal on that night was to make the stop as short as possible, because I was being paid by the mile and

would be punished by not getting good loads in the future if the load was delivered late.

Clinton D. Reynolds, after I politely requested that he get the light out of my eyes, yelled back to me in a hostile tone, "Goddamn it! Don't you worry about what the hell I'm doing over here." Thinking he did not understand my request, I repeated that he was blinding me with his flashlight. At that point, Clinton D. Reynolds yelled another obscenity at me, "I told you to get your fucking ass over here two times!"

At this point in time I realized that I had the type of problem that professional truck drivers for ICC respected carriers such as Texas Star Express generally do not encounter. I perceived that Clinton D. Reynolds was deliberately, intentionally and willfully using the strong beam of his flashlight in attempts to anger, irritate and provoke me.

Being upset by Clinton D. Reynolds' treatment of me, which I recognized and properly perceived was directed toward me because of my race, I used language similar to the language that Clinton D. Reynolds initially used in talking to me. I asked Clinton D. Reynolds to stop shining "the Goddamn flashlight" in my eyes. He responded, "Oh yeah?" and then told me to meet him at the back of the truck, "and we'll see."

After that statement, I was very confused about both who this person was and exactly what the person was attempting to accomplish. I became very apprehensive, as I wondered if the person was even a law enforcement officer. My worry was heightened as I began to worry about the reason that I had been approached on the passenger side of the truck, in a

dark area, out of view of passing traffic. I was even more worried because of the paramilitary type of dress of Clinton D. Reynolds. He was wearing a black shirt and khaki pants.

I could not understand, what kind of law enforcement officer would pull me over, stand some fifteen feet from my truck in a dark area, shine the intense beam of a flashlight in my eyes, and then, after I complained about being blinded, even worse, begin to yell obscenities at me. This type of conduct by a law enforcement officer was something that I had never experienced or heard other truckers discuss.

In my experience, law enforcement officers present to the driver's side of the vehicle, and either knock on the door or window or otherwise indicate their presence, if their presence is not apparent, and then politely ask that first, well known question, "can I see your driver's license and medical card."

Generally, this initial contact is followed by the officer informing the person stopped of the reason for the stop. None of this happened when Clinton D. Reynolds stopped me. The conduct of Clinton D. Reynolds very much scared me even though I had seen the numerous patrol cars in the grassy median and believed that there were law enforcement officers near-by.

When Clinton D. Reynolds yelled, "Goddamn it!" to me, I consider that phrase to be demeaning curse words. These words were used in a manner to demean me as a person because of my race. I consider this conduct by a person who was a law enforcement officer to be just plain despicable.

I approached the rear of the trailer with my driver's license and medical card exposed in plain view in my hand. The items viewable in my hand on the videotape are my driver's license and medical card.

There was a lot of road noise at the time we were at the rear of the trailer. It was necessary for me to talk loudly both to be heard over the road noise and in an attempt to explain how inappropriate the conduct toward me by Clinton D. Reynolds was.

Instead of informing me of the reason for the stop, Clinton D. Reynolds attempted to accelerate his initial, demeaning behavior toward me.

As previously explained, this initial, demeaning behavior of Clinton D. Reynolds began before I got out of the truck. While I was at the rear of the trailer, Clinton D. Reynolds treated me like a disobedient child. He treated me like he wanted me to submit to being a lower level of person than he was and that he's a high, mighty whitey, and I'm just the black truck driver needing to do whatever he says, whether the orders were legal or not.

Because of my experience of 37 years of living on this earth, I knew Clinton Reynolds was racist. I attempted to explain this to counsel for Clinton D. Reynolds at my deposition.

I further explained at my deposition that I believe that if I had been a white person, Clinton D. Reynolds would never have done such a thing to me. He would never treat a white person like he treated me. Clinton D. Reynolds hated that a black man was communicating with him on the same level he was. I stood what I though to be my constitutionally

protected ground, which was my right, and I don't think Clinton D. Reynolds appreciated that at all.

Frankly, I felt that all of the years that I served this country in various parts of the world in the military accorded me the right to be treated equally. While in the military, at times I served as a military police and I know we were trained never to treat people who were even against our country in the manner that Clinton D. Reynolds was treating me.

I repeatedly told Clinton D. Reynolds that I had done nothing wrong. Certainly, if he thought that I was doing something wrong, he should have informed me of my wrongdoing.

Never at any time until I arrived at the jail did I learn that Clinton D. Reynolds was maintaining that I had an inoperative tag light on the trailer. To me, it is not understandable that Clinton D. Reynolds never informed me of the reason for the stop. I was not informed of the reason until several hours after I had arrived at the jail.

When I viewed the videotape during the depositions, I heard Clinton D. Reynolds tell another law enforcement officer that he was "going" to charge me with a tag violation, meaning a tag light violation. The way that Clinton D. Reynolds used the word "going" to charge, adds to my disbelief that he really stopped me for a tag light violation.

At the time I was at the rear of the truck, I was willing to either be arrested or get whatever documents Clinton D. Reynolds asked me to bring to him. At no time did I get into a fighting stance, "square up" as sworn to by Clinton D. Reynolds or

indicate that I was going to be violent or cause injury to Clinton D. Reynolds.

Clinton D. Reynolds electrically shot me with a M26 Air Taser Gun at a time that I was attempting to follow his orders. He did not follow the procedure in the Coweta County Sheriff's Policy and Operations Manual.

As the result of being shot with the Taser, and electrically knocked down to the pavement of the roadbed of I-85, I lost total control of the functions of my body. I dangerously fell into or near the roadbed of I-85, could have been hit by oncoming traffic, and because of the proximity of the bumpers of the vehicles, could have easily struck my head during my debilitation; luckily, I did not hit the truck or cruiser during my debilitation.

The electrode from the M26 Air Taser Gun penetrated my skin, knocking me to the pavement near or on the roadbed of I-85. The shot from the Taser Gun disabled my nervous system. While lying on the ground in a shocked state of mind from being shot, I had vaguely retained composure enough to hear Clinton D. Reynolds yell, "handcuff that son of a bitch!" I clearly heard this remark on the videotape.

This abusive, foul language directive to another law enforcement officer by Clinton D. Reynolds was a part of his conduct and conspiracy to unconstitutionally mistreat me by falsely charging me with a crime and using excessive force. This order to "handcuff that son of a bitch!" to another law enforcement officer was followed by a painfully strong knee to my back forcing my chest, with the metal probe from the Taser Gun, hard into the pavement. The metal electrode,

which was stuck in my skin, was aggravated by the weight of the other law enforcement officer on the wound, which still had the metal electrode inserted in my skin.

This additional excessive force by the other law enforcement officer at the direction of Clinton D. Reynolds was a part of the conspiracy of Clinton D. Reynolds to unconstitutionally mistreat me. Clinton D. Reynolds knew that the Taser Gun would inflict pain to me as he stood me in front of the cruiser and said to me, "that didn't feel good did it?" Again, this language by Clinton D. Reynolds was just another of his verbal attempts to abuse me.

One aspect of the unconstitutional misconduct of Clinton D. Reynolds was that he was attempting to interfere with my right of free speech in that he was attempting to prevent me from expressing my innocence.

After removing the electronic metal probe from my chest, with the assistance of another deputy sheriff, Clinton D. Reynolds then abusively placed me in the back of his cruiser.

I was placed in the cruiser in a position that I could only lie down on the back seat, with my hands cuffed behind me.

At any time that night, if Clinton D. Reynolds had asked me to turn around to be handcuffed or to get into his car, I would have complied without hesitation even though I was never informed of the reason for the stop and had no idea of the alleged violation. After the demeaning language of Clinton D. Reynolds to me in the front of the truck, I wanted to get away from Clinton D. Reynolds, because I was afraid of him;

however, I never imagined he was going to shoot me with something like a Taser and cause me to fall into or near the roadbed of I-85.

If Clinton D. Reynolds had informed me that he thought that my tag light was not operative, I could have easily shown him that he was incorrect.

My tag light was operative. As soon as I left the jail, I immediately checked to see if the charges were correct. The light was operative and there was no loose wiring that could have caused it to be inoperative.

During the time that I was lying in the back seat of the car, handcuffed and recovering from the infliction of the wound to my chest, I later observed on the third version of the videotape, that Clinton D. Reynolds, after all of the lights were turned off on my tractor trailer, took the video camera and directed it on the tag to demonstrate that the tag light was not operative. Naturally, the tag light was not operative once the lights of the truck were turned off.

I did not obstruct Clinton D. Reynolds.

Clinton D. Reynolds is a racist who would not have conducted himself as he did, if I had been a white person. I felt Clinton D. Reynolds was trying to make me feel like two-thirds of a person.

After I obtained the third version of the video tape, I could observe that the seal on my trailer was broken, as I found it when I retrieved my truck from the towing company location.

The personal items in my truck cab were unconstitutionally searched and seized. I was never presented an inventory of the items taken from the cab of my truck. When I retrieved my truck from the

towing company, the remaining personal items in my cab were in total disarray. Personal items of monetary value were not present in the cab of the truck when I retrieved it.

The trailer that I drove was illegally searched and my personal belongings were taken by Clinton D. Reynolds and not inventoried. After waiting an inordinately long period of time lying in the back seat of the cruiser, I was finally taken to the county jail. Only after I had been at the jail for several hours, was I informed by the booking officer the alleged reason for the initial stop, and my incarceration.

Upon my release from jail the next morning, I had to wait a substantial amount of time for Clinton D. Reynolds to return my Bill of Lading, my log book and other items that Clinton D. Reynolds had taken from the cab of my truck.

Before being released from jail, I had to contact my spouse in Oklahoma, waking her early in the morning, before 6:00 a.m. there. I had to explain my situation, which alarmed her for my safety. I then had to explain how she needed to go to a Western Union office to wire $1300 to Sheriff Mike Yeager so that I could be released. English is not her native tongue, and these procedures were totally unfamiliar to her. My spouse had to find out that the Western Union facility was located in a supermarket and go there in person after having first gone to the bank when it opened to obtain enough cash to pay for the $1300 bail and Western Union's $100 fee.

Before getting my truck, I had to pay the towing lot operator. While the physical damage to my truck and the expenses it cost me to get out of jail are miniscule

when compared to the infliction of emotional distress caused to me, it is of some relevance that my truck was damaged in being towed.

A part of the conspiracy was that persons attempting to assist Clinton D. Reynolds in covering up his unconstitutional conduct tampered with evidence and illegally took property belonging to me.

I suffered both temporary and permanent physical and emotional injuries as the result of the conduct of Clinton D. Reynolds. I have a scar on my chest, which is a daily emotional reminder of the racially discriminatory, unconstitutional mistreatment that I received from Clinton D. Reynolds. This incident caused me severe emotional distress. The conduct of Clinton D. Reynolds was intentional, for the most part, and reckless. I consider the conduct of Clinton D. Reynolds that caused my emotional distress to be extreme and outrageous.

This affidavit is provided for use in support of my opposition to the Motion for Summary Judgment of Clinton D. Reynolds.

S/_____
Stacy Allen Draper

Sworn to and subscribed to before me
This 24th day of August, 2002.

S/_____
Notary Public

My commission expires:
SEAL_____

APPENDIX I

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

STACY ALLEN DRAPER,
Plaintiff,

v. **CIVIL ACTION NO. 3:02-CV-10-JTC**

CLINTON D. REYNOLDS,
Defendant.

CERTIFICATE OF INTERESTED PERSONS

1. The undersigned counsel of record for the parties to this action certify that the following is a full and complete list of all parties in this action:

Plaintiff: Stacy Allen Draper
Defendant: Clinton D. Reynolds

2. The undersigned further certify that the following is a full and complete list of all other persons, associations of persons, firms, partnerships or corporations (including those related to party as a subsidiary, conglomerate, affiliate, or parent corporation) having either a financial interest in or other interest which could be substantially affected by the outcome of this particular case:

Plaintiff maintains:

> This cause of action was removed from the State Court of Coweta County to the United States District Court for the Northern District of Georgia, Newnan Division. The motivation, in

part, for the removal by counsel for the Defendant was to select Judge Jack T. Camp as the judge in this matter, as this judge is assigned the cases in the Newnan Division.

Judge Jack Camp has a large financial interest in land located in Coweta County. The financial value of this property is governed in part by the zoning and land use. The zoning and land uses permitted of this property is ultimately controlled by somewhat discretionary decisions of the Coweta Board of County Commissioners. This property is additionally taxed according to values determined by Coweta County authorities.

This litigation involves the wrongdoings of a Deputy Sheriff who is covered by insurance paid by funds derived from property taxes in Coweta County. The premiums for the policy of insurance are derived by determining the losses paid out by the insurance company.

Judge Jack Camp should disqualify himself from serving on this case because of his financial interest in property whose value is in part controlled by the Coweta County Commissioners and further because as a resident of Coweta County with a large financial interest in property, there is certainly more than the appearance that he would prejudge matters in a manner to gain political favor with both the Coweta County Commissioners and the law firm representing the Coweta County Commissioners, a law firm

of which he was a partner before being appointed to the United States District Court.

This case involves the illegal arrest and Air Taser shooting of a person by a Deputy Sheriff, which bears significant political consequences to persons in government in Coweta County.

Attorneys fees are a part of the recovery sought in this case. These attorneys fees are determined by the Court. Judge Jack Camp in the past has not awarded attorneys fees to out of county attorneys in accordance with the market value of services of attorneys with their experience and expertise. See Cotton v. Todd et al., Civil Action No. 3:93-CV-96-JTC.

This initial information is provided to inform Judge Jack Camp the nature of this litigation. For the reasons stated above, Judge Jack Camp is listed as a person with a financial interest in the outcome of this case.

1. Millard Farmer
2. Coregis Insurance Company
3. Board of Commissioners of Coweta County
4. Glover & Davis, P. A.
5. Asa Powell, Jr.
6. Swift, Currie, McGhee & Hiers, LLP
7. Scott M. Williamson
8. Christopher D. Balch
9. Members of the Board of Commissioners of Coweta County
10. Sheriff of Coweta County Michael Yeager

11. United States District Judge Jack T. Camp
12. Coweta County

Defendant maintains

1. Millard Farmer
2. Coregis Insurance Company

The undersigned further certify that the following is a full and complete listing of all persons serving as attorneys for the parties in this proceeding:

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404 874-8800

Submitted this 22nd day of February, 2002.

S/_____
Millard Farmer
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_____
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APPENDIX J

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
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June 19, 2002
Reply to: Newnan

Chambers of
Jack T. Camp,
Judge

Atlanta Division:
2142 United States
Courthouse
Atlanta, Ga 30303
(404) 215-1520

VIA HAND DELIVERY

Asa M. Powell, Jr.
Coweta County Attorney
Glover & Davis, P.C.
10 Brown Street
Newnan, Georgia 30264

Re: Cases filed in the Newnan Division of the U.S. District Court which involve the Coweta County Commissioners

Dear Mitch:

Some time ago, my family filed a rezoning request seeking to rezone Camp family property near Moreland. I had a small interest in the property, and considered it necessary to withdraw from cases involving the County Commissioners since they have

the final decision on zoning applications. I continued to recuse from cases involving the Commissioners until recently.

The rezoning application was withdrawn before being presented to the Commissioners in June 2001. I have no present intention of renewing the application, and I have not authorized anyone to address zoning or any other matter before the Commissioners in which l have an interest.

When I withdrew from those cases, they were assigned to judges from other parts of Georgia, most of whom sit in Atlanta. This was inconvenient for those judges, for local lawyers involved in the cases, and made it more difficult for the public to keep abreast of the litigation.

The purpose of this letter is to advise you that I do not intend to authorize anyone to seek rezoning of any property in which I have an interest and that I see no reason to withdraw from cases involving the Commissioners. I have no interest in any matter before the county except that of any taxpayer or landowner.

Please discuss this with your client, and let me know if either you or your client object. If so, I will be glad to consider your position.

Yours truly,
S/ Jack Camp

/dm
cc: John Stuckey (Via Telecopy No, (404) 6812299)
cc: Coweta County Building Department (Via Hand Delivery)